Defining Disability

A Complex Issue

Government of Canada Gouvernement du Canada

Canada

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For additional copies, please contact:

Enquiries Centre
Human Resources Development Canada
140 Promenade du Portage
Phase IV, Level 0
Gatineau, Quebec K1A 0J9
Fax: (819) 953-7260
pub@hrdc-drhc.gc.ca

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EXECUTIVE SUMMARY

This document provides a review of, and framework for understanding, disability definitions in key Government of Canada initiatives.

Overall, the report illustrates and seeks to clarify the complex and multi-dimensional nature of the concept of disability found in policy, programs and benefits. It highlights the fact that confusion exists between definitions, eligibility criteria and program objectives. The paper concludes that a single harmonized definition of disability across the Government of Canada may not be desirable or achievable and that the scope of solutions to address the broader issues identified go beyond definitions. In reaching these conclusions, the paper illustrates the various tensions between the concept of disability, program design and the horizontal nature of disability programs.

The report is divided into four main sections. Part one describes the evolution of the key disability conceptual models of disability—medical, functional limitation and social and human rights models—as well as the main disability data sources based on these models.

Part two is the most detailed section of the report. It provides an inventory of key Government of Canada laws, programs and tax measures that target persons with disabilities in four areas: antidiscrimination legislation; activities of daily living and assistance in the home; income, and employment and learning. The review highlights the varying treatments of disability in each of these four categories, confirming that no single definition of disability exists at the federal level. Instead, disability definitions are found both explicitly and implicitly in legislative statutes and eligibility criteria. The report demonstrates the interaction and influence of these sometimes competing perspectives on disability definitions, objectives and eligibility.

In part three, the report provides a summary of the key issues related to defining disability across the Government of Canada, including: the complexity of disability definitions because of the evolving perception of the meaning of disability; the horizontal nature and shared responsibility of disability; the confusion between disability definitions, program objectives and their eligibility criteria (for example, some programs focus on employability and others on income replacement and some programs determine disability through self identification while others require detailed information from medical specialists); and, finally, the need for improved communication and awareness. The report demonstrates that these issues are not easily disentangled and continue to challenge policy responses.

Part four highlights key government actions and next steps to address the major issues. The report's conclusion stresses the need to bring more coherence to disability-related programs. Despite the challenges associated with disability definitions, the Government of Canada has undertaken a number of activities aimed at increasing the understanding, awareness and accessibility of programs, services and benefits for Canadians with disabilities. Specific commitments include improving the horizontal management of

disability programs, increasing consultation with all partners, streamlining the application and assessment processes, and improving communication products for Canadians.

In addition to describing programs, the report provides some examples of concerns related to definitions raised by witnesses appearing before various Parliamentary committees between 2001 and 2003. A preliminary study of provincial disability definitions conducted by a consultant on behalf of HRDC, and international definitions are also included as annexes. Finally, a table that summarizes the key initiatives reviewed is included in Annex D.

By providing a database of information on key Government of Canada disability initiatives, this report is only a first step in our goal to provide a more coherent picture of our disability policies and programs. Improving our understanding of the interaction between the different concepts of disability through further research and consultation will assist the Government of Canada in its disability policy and program design. To deal with the broader issues will require further discussion and collaboration among and within governments to explore areas where consistent approaches could lead to improved programs and services for people with disabilities.

INTRODUCTION

The purpose of this paper is to provide essential knowledge to assist the Government of Canada in improving the understanding of its key disability programs, and to help clarify the differences between definitions, objectives and eligibility criteria as they relate to those initiatives. The document does not provide comprehensive information on these key programs, nor is it meant to assess the adequacy of the programs; however, by providing a clearer picture as a first step, it should help guide further discussions to improve program coherence and communication and to help address broader issues facing persons with disabilities.

Concerns regarding definitions and eligibility criteria were brought forward in 2001, 2002 and 2003 by disability organizations, academics and professional associations, during hearings of the House of Commons Subcommittee on the Status of Persons with Disabilities. The Subcommittee reflected these concerns in three reports. The first, in June 2001, was *A Common Vision*, in which Recommendation 6 specifically asked the Government of Canada to study the harmonization of disability definitions in federally administered programs. The second report, in March 2002, *Getting It Right for Canadians: the Disability Tax Credit*, looked at the eligibility criteria for the disability tax credit and criticized them for being too restrictive. The third report, issued in June 2003, *Listening to Canadians: A first view of the future of the Canada Pension Plan Disability Program* raised similar concerns regarding program eligibility for the Canada Pension Plan–Disability Program (CPPD). (See sampling of concerns in Annex A). The Government of Canada tabled its response to the report on CPPD on November 5, 2003.[1]

In addition, in June 2002, the Standing Committee on Human Resources Development released *Promoting Equality in the Federal Jurisdiction: Review of the Employment Equity Act*. In this report the Committee expressed concerns about the definition of disability and recommended amending portions of the Act related to disability definitions. The issue relates to linking "disability" and "disadvantage". Many working people with disabilities do not consider themselves disadvantaged in employment and may not self identify as such on workforce surveys. As a result employment equity statistics may under represent the number of employees with disabilities.

The Government, in its response to *A Common Vision*, stated that it

> "Agrees with the recommendation to study the definitions of disability in federally administered disability programs. Human Resources Development Canada will undertake a review of the definitions of disability with all federal departments involved in disability issues and will report on its progress on a regular basis."

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[1] The report can be consulted at: http://www.hrdc-drhc.gc.ca/isp/pub/5threport/5thpg1_f.shtml

As a result, in 2002 the Office for Disability Issues, part of Human Resources Development Canada (HRDC), set up a working group to gather information and begin reviewing Government of Canada disability programs. This paper is the result of that work, assisted by representatives from other branches of HRDC, Canada Customs and Revenue Agency (CCRA), Finance Canada, Veterans Affairs Canada (VAC), and Canada Mortgage and Housing Corporation (CMHC). It provides a technical description of the definitions of disability and eligibility criteria in key Government of Canada initiatives which include laws, tax measures and programs. Not all initiatives available to persons with disabilities are described in this report. As the focus is on definitions and eligibility, the only initiatives that are discussed are those that specifically target persons with disabilities and that explicitly define disability or the eligibility requirements.

The paper is organized into four main sections. PART I discusses the evolution of key disability conceptual models and classification systems that have evolved over several decades and the main disability data sources based on these models and systems. PART II describes key disability-related Government of Canada laws, programs and tax measures. PART III summarizes some of the key issues related to defining disability. PART IV concludes with Government of Canada actions and next steps .

Finally, four annexes provide information on the concerns heard by Parliamentarians, on disability definitions in provinces and territories and from other countries. A summary table of the initiatives described in this report is also included.

PART I – DISABILITY PERSPECTIVES AND DATA SOURCES

Conceptual Models and Classification Systems

Disability is difficult to define because it is a multi-dimensional concept with both objective and subjective characteristics. When interpreted as an illness or impairment, disability is seen as fixed in an individual's body or mind. When interpreted as a social construct, disability is seen in terms of the socio-economic, cultural and political disadvantages resulting from an individual's exclusion.

Persons with disabilities, advocacy groups, medical practitioners and the general public all have a different view of disability. And the meaning of disability has evolved over the years through various perspectives such as a moral perspective, a medical model as well as social and human rights perspectives. Three major classification systems or disability perspectives which have helped define disability over the decades are discussed below.

The various perspectives have an effect not only on how we define disability but also on program design and how decisions are made regarding program eligibility.

■ IMPAIRMENT PERSPECTIVE

The impairment perspective considers disability a health problem or abnormality that is situated in an individual's body or mind. This perspective is best expressed by the **medical model** which views disability in terms of disease, illness, abnormality and personal tragedy. The medical model assumes that disability is an intrinsic characteristic of individuals with disabilities. This assumption translates into practices that attempt to "fix" individuals' abnormalities and defects, which are seen as strictly personal conditions.

Many criticize the medical model for its limitations i.e. the model ignores the role of the social and physical environment in the disabling process. Moreover, the model locates the defect in a person's body or mind, and that person may be defined as defective, abnormal and by extension biologically or mentally inferior.

The **International Classification of Diseases** (ICD) is a system of coding diseases and health conditions that is used by most health services around the world. The World Health Organization (WHO), the body responsible for periodically revising the ICD, released the tenth revision (ICD-10) in 1999.

The ICD was developed exclusively in consultation with international medical and rehabilitation professionals, including associations of hospitals and medical doctors; it did not involve persons with disabilities or their organizations. The ICD also remains silent on the social and environmental aspects of impairment and disability.

■ FUNCTIONAL LIMITATIONS PERSPECTIVE

The functional limitations perspective arose from attempts to expand the medical model to include non-medical criteria of disability, especially the social and physical environment. Nonetheless, the notion that impairments are the direct cause of disability remains central to this perspective. Also, like the impairment perspective, the functional limitations perspective considers disability in quantitative terms, measuring functional restrictions against a standard.

Under the **Nagi model**,[2] "functional limitations" are a distinct concept. The limitations are tied more to activities associated with social roles (caring for a child, walking a distance) than to accredited, doctor-tested limitations (the ability to carry weight or flex an injured knee). Disability is seen as influenced not only by the characteristics of impairments, such as type and severity, but also by how the individual defines a given situation and reacts to it, and how others define that situation through their reactions and expectations.

The WHO's 1980 **International Classification of Impairments, Disabilities and Handicaps (ICIDH)** is the first major classification system to focus specifically on disability. According to the ICIDH, disability refers to any reduction or lack of ability, caused by impairment, to perform an activity in a way considered normal for a human being. The ICIDH framework presents disability as a linear process that begins with an underlying cause, which brings about an impairment, which in turn causes a disability that may result in a handicap. Many have criticized ICIDH's linear explanation of disability.

■ ECOLOGICAL PERSPECTIVE

The ecological perspective arose in the 1970s, but became more prevalent in the mid-1990s in response to criticism of the impairment and functional limitations perspectives. Like the latter perspective, the ecological perspective rests on three distinct disability concepts: pathology (or abnormality), impairment and disability. However, it sees disability as resulting from the interaction of impairment, activity limitations and participation restrictions in a specific social or physical environment such as work, home or school.

The **Quebec disability production process model** (*processus de la production du handicap*) was developed by a team at Université Laval in Quebec, led by social scientist Patrick Fougeyrollas. The Quebec model, which contributed greatly to the review and eventual improvement of the ICIDH, rejects the linear cause-and-effect explanation of disability. This model presents disability as the interaction of three kinds of factors:

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[2] Saad Z. Nagi (1965). "Some conceptual issues in Disability and Rehabilitation". In M. Sussman (ed.). Sociology and Rehabilitation. Washington, DC: American Sociological Association. PP. 100-13.

personal factors (age, sex and cultural identity), environmental factors (the social context in which the person lives) and life habits (the person's daily activities). The Quebec model shifts the focus from a fixed impairment that is part of a person's organic system to other, more changeable factors that affect that person's participation in society. In the Quebec model, disability depends on the environment in which a person lives and carries out daily activities. If the environment is adapted to the person, the disability can change or even disappear.

There are many variations of the **social model**, but all portray disability as a social construct created by ability-oriented and ability-dominated environments. The social model rejects the linear causality. According to the social model, even though impairment has an objective reality that is attached to the body or mind, disability has more to do with society's failure to account for the needs of persons with disabilities.

The **human rights model** is a distinct subgroup of the social model. It understands disability as a social construct. The model is primarily concerned with the individual's inherent dignity as a human being (and sometimes, if at all, with the individual's medical characteristics).

In response to criticism leveled at the ICIDH classification system, the WHO revised it, releasing the latest revision in May 2001 under a new name, **the International Classification of Functioning, Disability and Health (ICF).** The ICF illustrated a clear shift: from describing disability, impairment and handicap in terms of diminishment to describing body structure, functioning, activities and participation in an objective way.

The general term "functioning" refers to all body functions, activities and participation while the term "disability," is understood to encompass the interaction between impairments and externally imposed activity limitations or participation restrictions.

One of the ICF's main objectives is to establish a common language for coding a wide range of information on health and health-related conditions, including disability. This standardized language makes it easier to compare conditions across nations, disciplines and sciences. Although the ICF is still relatively new, it has become accepted worldwide as a substantial improvement over the ICIDH. Many disability organizations and persons with disabilities participated in the development of the ICF.

Disability Data Sources

Over the past two decades, Canada has developed a large body of national statistical sources that identify and describe the population of Canadians with disabilities. The collection of data on disability has been influenced by the various models described above. Through a series of questions — which differ depending on the focus of the survey — respondents identify themselves as having certain health conditions or activity limitations.

Key disability data sources:
Census (1986, 1991, 1996, 2001), Health and Activity Limitation Survey (1986, 1991), Aboriginal Peoples Survey (1991, 2001), National Population Health Survey (1994-1999), Canadian Community Health Survey (2000-2001), National Longitudinal Survey of Children and Youth (1994-2001), Survey of Labour and Income Dynamics (1993-2001), Participation and Activity Limitation Survey (2001).

The 2001 Participation and Activity Limitation Survey (PALS) provides us with the most up-to-date information on Canadians with disabilities. It identified some 3.6 million (1 in 8) people living in households as having a disability — 5 percent are under 15 years of age, 55 percent are of working age (15 to 64) and 40 percent are 65 and older. The survey respondents indicate if they have a disability i.e. activity and participation limitation. Among children under 15 years of age, 57 percent have mild to moderate disabilities and 43 percent have severe or very severe disabilities. Among adults 15 and older, 34 percent report mild disabilities, 25 percent moderate and 41 percent severe or very severe disabilities. Working age adults with disabilities are at higher risk of having a low income and, in 1998, nearly half of them (48 percent) relied on government programs as their primary source of income compared to 11 percent for those without disabilities. In 2001, 43.5 percent of persons with disabilities had a job—just over half the rate of those without disabilities (74%).

■ DATA SOURCES BASED ON THE IMPAIRMENT PERSPECTIVE

Most disability programs and benefits in Canada, including many described in this paper, focus on medically certified impairments. As a result, the data they collect and use are largely based on the medical model. For example, both the Canada Pension Plan disability program (administered by HRDC) and the Disability Tax Credit (administered by the CCRA) collect and process medically certified information on the type and severity of claimants' disabilities. However, these programs also require information on functional limitations, either work-related or about basic activities of daily living.

■ DATA SOURCES BASED ON THE FUNCTIONAL LIMITATIONS PERSPECTIVE

All the surveys mentioned above use one or more filter questions to identify people who experience activity limitations—a focus that aligns them with the functional limitations perspective. The number of filter questions and their wording vary, but generally people are considered to have a disability if they report limitations or difficulties in doing common activities, or limitations or reductions in the amount or type of activities they can do in various areas of their lives, including home, school, work, transportation and leisure.

Most of Canada's statistical sources simply identify the presence of a disability. However, some sources—particularly the Health and Activity Limitation Survey, the National Population Health Survey, the Canadian Community Health Survey and the Participation and Activity Limitation Survey—go beyond this to provide more details.

In Canada, until publication of the 2001 Participation and Activity Limitation Survey (see next section), the most comprehensive data source on people with disabilities was the Health and Activity Limitation Survey (HALS). Conducted as a post-census survey in 1986 and 1991, HALS collected information on seven types of disability: hearing, seeing, speaking, agility, mobility, mental/learning and physical disabilities not elsewhere classified ("unknown").

HALS asked detailed questions about specific activity limitations a person might experience. This logic followed directly from the definition of disability in the 1980 ICIDH: "any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being." Because the questions were aligned with the ICIDH, HALS was largely consistent with the functional limitations perspective; it focused on the limitations people experience in their environment. However, HALS did include many questions about the environment itself. The resulting data provided a starting point for examining disability using the ecological perspective.

Both the National Population Health Survey and the Canadian Community Health Survey ask many questions about activity limitations and health conditions. However, these surveys gather little information on the environments in which the respondents live.

■ DATA SOURCES BASED ON THE ECOLOGICAL PERSPECTIVE

In 2001, the Participation and Activity Limitation Survey (PALS) replaced HALS as the main disability data source related to employment, education, income, and supports such as tax and financial measures as well as access to housing, transportation, recreation, leisure, health care and volunteer activities.

While PALS continues to identify people with disabilities using the 1980 ICIDH functional limitations approach, the disability framework outlined by that system's successor, the 2001 International Classification of Functioning, Disability and Health (ICF), is evident throughout the survey. PALS recognizes that disability-related characteristics vary according to type and severity at the individual level, and according to personal factors (e.g., age, gender, and schooling) as well as environmental factors (e.g., region, integration policies and programs). Therefore, PALS is a data source heavily influenced by the ecological perspective. The fact that disability community groups were consulted on the types, sequence and objectives of the questions that should be used in PALS also influenced the design of the survey and its concept of disability.

In PALS, persons with disabilities are identified based on their positive responses to questions that identify the existence or the likelihood of a disability. The PALS questionnaire covers a wider variety of activity limitations than HALS. It asks questions about hearing, seeing, speaking, mobility, flexibility and agility, chronic pain or discomfort, learning (including attention problems, hyperactivity, dyslexia), remembering, developmental disabilities or disorders, emotional conditions, and psychological or psychiatric conditions (including phobias, depression, schizophrenia, drinking and drug problems).

Unlike HALS, PALS collects data on the duration and frequency of health conditions and impairments, recognizing that disability may change according to a person's age, gender, habits and other factors. Some disabilities, such as visual impairment, may be permanent and have a continuous impact. Others, such as manic depression, may be cyclical or vary in severity. PALS asks respondents whether their activities are limited "sometimes" or "often" to capture the cyclical nature of limitations.

PALS distinguishes four levels of severity: mild, moderate, severe and very severe. The level of severity depends not only on how severe each type of disability is, but also on how many disabilities an individual has. For example, someone reporting difficulty hearing, walking half a kilometre, dressing and remembering would be classified at a more severe level than someone reporting occasional problems hearing.

PALS goes much further than HALS in collecting information about the environment and how it affects an individual's ability to participate in activities. PALS asks detailed questions about the need for and availability of supportive aids, devices, goods and services.

PART II – DISABILITY DEFINITIONS IN GOVERNMENT OF CANADA AND PROGRAMS

In Canada, as in many European nations, disability emerged as a policy issue for governments around the time of World War I. Many Canadian soldiers were injured during the war, and to assist them and their dependants, the Government of Canada adopted the *Veteran Compensation Act* in 1918. Moreover, the war pushed the Canadian economy through rapid industrialization in response to allies' demands for war machinery and other goods. With this industrialization came a higher incidence of work-related injuries, prompting some provincial governments, such as those of Ontario[3] and Quebec,[4] to introduce legislation to protect injured workers.

In the decades since, disability policy in Canada has developed largely in parallel with international disability initiatives. For example, *Obstacles*, the comprehensive report of the House of Commons Special Committee on the Disabled and Handicapped, was prepared in 1980, the same year the WHO released its International Classification of Impairments, Disabilities and Handicaps. *Obstacles* was then published in 1981, the year declared by the United Nations as the International Year of Disabled Persons.

Since the 1980s, the Government of Canada made anti-discrimination and the full participation of people with disabilities in Canadian citizenship the cornerstone of its long-term disability policy. Government of Canada disability policy includes a collection of laws, tax measures and programs that have been grouped for this report according to the following four main areas:

1) Antidiscrimination and protection of rights
2) Activities of daily living and assistance in the home
3) Income
4) Employment and learning

Using these groupings, the following sections present the definitions of disability—whether defined explicitly or implicitly through eligibility criteria—in key Government of Canada initiatives i.e. laws, tax measures, and programs. These sections also identify the objectives of these various instruments, and in the case of programs and tax measures, how disability is assessed. Third party assessments of disability, in the case of most programs, contrasts with the self-rated or self-reported status of disability identified through surveys. It is important to note that some initiatives may fit more than one category.

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[3] Ontario was a pioneer, establishing the first legislation on employers' responsibility for work injuries in 1886. In 1914 the province's *Workmen's Compensation Act* came into force. This legislation compensated injured workers and their survivors and eliminated the effects of "workers' negligence" and "work-related risks," concepts employers used to avoid taking responsibility for workers' injuries and deaths. See Dennis Guest, *The Emergence of Social Security in Canada* (Vancouver: University of British Columbia Press, 1980).

[4] The Quebec Accidents Act (*la Loi québécoise des accidents du travail*) came into effect in 1909 to provide claims procedures and a mode of compensation based on degrees of incapacity, except in cases of workers' negligence. However, this law was neither legally binding nor enforceable. See Guest, *The Emergence of Social Security in Canada*.

Key Government of Canada Laws

At the heart of human rights for persons with disabilities is the recognition of their right to full participation in Canadian citizenship. Canada has adopted laws to realize this goal and to prohibit discrimination against disability. The legislation is applicable in many areas of society, such as employment, public goods and services, information, public spaces, housing and education.

1 ANTIDISCRIMINATION AND PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

With the *Constitution Act, 1982*, which includes the *Canadian Charter of Rights and Freedoms,* Canada became a leader in entrenching the constitutional protection of the equal rights of people with disabilities.[5] Today, all human rights codes in Canada prohibit discrimination on the grounds of "disability" or "handicap." But before arriving at this point, Canadian legislation passed through a markedly different period when, for example, potential immigrants with disabilities were defined as "undesirable" and Canadians with mental disabilities were sterilized.[6]

The 1970s marked a turning point for human rights in general in Canada. On the heels of important international movements during the 1960s, including the movement against colonization, the black movement, the women's movement, the peace movement and the disability movement, most Canadian human rights laws came into effect during the 1970s, and much discriminatory legislation was repealed.

Canadian human rights legislation recognizes medically certified conditions and injury as disabling factors and includes them as prohibited grounds of discrimination. Interpretations can differ as to whether a medical condition does in fact constitute a disability. The case of *McKay-Panos v. Air Canada* (described on page 20) illustrates this difficulty.

This section describes key Government of Canada laws designed to protect against discrimination and to ensure accessibility to persons with disabilities. The only legislation that explicitly defines disability is the Employment Equity Act (see 1.3).

1.1 Canadian Charter of Rights and Freedoms

The *Constitution Act, 1982*, which includes the *Canadian Charter of Rights and Freedoms* (the Charter), is the highest law of Canada, meaning it supersedes any federal or provincial law that is inconsistent with its provisions.

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[5] M. David Lepofsky and Jerome Bickenbach, "Equality Rights and the Physically Handicapped." In Anne E. Bayefsky and Mary Eberts (eds.). *Equality Rights and the Canadian Charter of Rights and Freedoms.* Toronto: Carswell, 1985.

[6] Until the 1967 amendments to the *Immigration Act*, persons with disabilities were in the "undesirable" class of potential immigrants to Canada. Even after the amendments, inadmissibility for medical and impairment reasons remained intact until 2001. Alberta's *Sexual Sterilization Act*, enacted in 1928, was not repealed until 1972.

The Charter does not define disability. However, in section 15, it prohibits discrimination based on mental or physical disability. Section 15 which came into force in 1985, stipulates the following:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The inclusion in the Charter of both mental and physical disabilities as prohibited grounds of discrimination represents an important evolution in Canadian legislation, for until the Charter, Canadians with mental disabilities received limited protection. The Charter's recognition of both types of disability was underscored in 1996, when a Supreme Court of Canada decision called it discriminatory to treat people with mental disabilities differently from those with physical disabilities.[7]

According to section 15 of the Charter, affirmative action programs that strive to improve the conditions of those that are disadvantaged because of a mental or physical disability are not necessarily discriminatory. In other words, the Charter, in emphasizing positive measures to correct disadvantages, recognizes that equality does not mean treating all individuals the same way. Rather, it means recognizing and accommodating their differences. In a landmark case in 1997,[8] in which three deaf persons complained that the British Columbia government had failed to provide sign language interpretation during their pregnancy and childbirth, the Supreme Court of Canada ruled that governments have a positive obligation under the Charter to address the needs of disadvantaged groups such as persons with disabilities. The Court also ruled that the province's failure to pay for interpretation was discriminatory, since the appellants had unequal access to public medical services.

1.2 Canadian Human Rights Act

The purpose of the 1977 *Canadian Human Rights Act* (CHRA) is to ensure equality of opportunity without the hindrance or prevention by discrimination in federal jurisdiction. Specifically, Section 2 of the CHRA aims to:

> extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives they wish and are able to have and to have their needs accommodated,

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[7] *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566; [1996] S.C.J. No. 55; (1996) 140 D.L.R. (4th) 1 (S.C.C.).

[8] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; [1997] S.C.J. No. 86 (S.C.C.).

> consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

In section 25, disability is defined as meaning "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug." The definition has been interpreted broadly to include perceived disability as well as actual disability. The CHR Tribunal has held that discriminating against someone because of a perception of disability has the same effect as discriminating against someone that is disabled.

The *Canadian Human Rights Act* applies to the Government of Canada, the governments of the Northwest Territories and Nunavut, and federal private businesses. The Act covers all employers and providers of goods, services, facilities and accommodation. It also applies to individuals and corporations carrying on the business of interprovincial and international transportation by road, air, ferry, pipeline, shipping and navigation. Further, it applies to chartered banks, and to those in telecommunications, including broadcasting and to the postal service.

Provinces and territories have similar laws forbidding discrimination in their own jurisdictions.

Canadian courts have repeatedly held that human rights legislation, such as the *Canadian Human Rights Act*, has quasi-constitutional status—meaning that it prevails over other ordinary legislation in the case of ambiguity.

Courts will interpret and give meaning to the term disability if definitions are not expressly provided. In the case of human rights, courts tend to define disability broadly to ensure the greatest protection possible for the equality rights of persons with disabilities. These "common law" definitions are an important source of definitions that inform other contexts. For example, the 2000 Supreme Court's decision in *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City) S.C.R. 655*, the Court held, with respect to the definition of « *handicap* » in the *Quebec Charter of Human Rights and Freedoms*, in light of s.15 of the Canadian Charter and related case law, that:

> Whatever the wording of definitions used in human rights legislation, Canadian courts tend to consider not only the objective basis for certain exclusionary practices (i.e. the actual existence of functional limitations), but also the subjective and erroneous perceptions regarding the existence of such limitations. Thus, tribunals and courts have recognized that even though they do not result in functional limitations, various ailments such as congenital physical

> malformations, asthma, speech impediments, obesity, acne and, more recently, being HIV positive, constitute grounds of discrimination…

Across Canada, complaints based on disability, compared with other prohibited grounds such as sex, race or religion, represent the largest group of human rights complaints. At the federal level, disability-related complaints to the Canadian Human Rights Commission increased from 37 percent in 2001 to 43 percent in 2002.[9] The proportion of disability-related complaints to provincial human rights commissions has been similarly high in recent years, especially in British Columbia[10] (34 percent), Manitoba[11] (41 percent) and Ontario[12] (48.5 percent).

1.3 Employment Equity Act

The *Employment Equity Act* (EEA) (1995) replaced the 1985 Act substantially differing therefrom by extending its coverage to the public service, by imposing sanctions for non-compliance and by making the Canadian Human Rights Commission responsible for monitoring, auditing and enforcing its implementation. Section 2 outlines the purpose of the Act:

> . . . to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

The Act defines "persons with disabilities" in section 3:

> "Persons with disabilities" mean persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who
>
> a) consider themselves to be disadvantaged in employment by reason of that impairment, or
> b) believe that a [*sic*] employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes

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[9] Canadian Human Rights Commission, 2002 Report: http://www.chrc-ccdp.ca/ar-ra/AR02RA/ARRA/Ar2002TOC_TdmRA2002.asp?l=e Consulted in November 2003.

[10] British Columbia Human Rights Commission, *Remaining Vigilant: Taking Responsibility for Human Rights*. Annual report 2001-2202

[11] Manitoba Human Rights Commission. Annual Report, 2001; Ontario Human Rights Commission, *Annual Report, 2001–2002*, available at the OHRC Web site: http://www.ohrc.on.ca/en_text/publications/2001-2002-annual-report.shtml

[12] http://www.ohrc.on.ca/english/publications/2001-2002-annual-report.shtml (accessed in November 2003).Table 1 of the 2002 Annual Report indicates that the new complaints based on disability increased from 41.2% in 2000-2001 to 48.5% in 2001-2002.

> persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

Viewing disability as a functional limitation rather than a medical impairment represents a significant step in the evolution of conceptual perspectives. The *Employment Equity Act* includes as persons with disabilities those whose functional limitations have been accommodated in their current jobs.[13]

The inclusion of both present and previous dependency on drugs or alcohol under the the *Employment Equity Act* (and under the *Canadian Human Rights* Act and a number of provincial laws) is also a recognition of disability as a social construct. The *Employment Equity Act* explicitly defines disability in terms of an actual or perceived disadvantage.

Persons — who self identify — must consider themselves disadvantaged in employment, or believe that their employer (present or potential) will consider them disadvantaged, because of their disability.

The disability definition in the EEA raises an important issue as many employees may not self-identify as having a disability, leading to under-representation in employment equity data. In its 2002 review of the *Employment Equity Act*, the Standing Committee on Human Resources Development and the Status of Persons with Disabilities raised the issue of linking disability and disadvantage. The Committee noted that "Employer representatives . . . put forward a case that the definition in the Act inappropriately links 'disability' and 'disadvantage' given that many working people with disabilities do not consider themselves disadvantaged in employment, and therefore, do not self-identify on workforce surveys." The Committee recommended that the definition be amended to address this issue. The Government of Canada Response committed to examining the definition through its existing Interdepartmental coordinating Committee on Employment Equity Data.

1.4 Immigration and Refugee Protection Act

Immigration to Canada is not a right, but a privilege bestowed on people who qualify under various economic, demographic and humanitarian admissibility criteria. Until the 1967 amendments to the *Immigration Act*, persons with disabilities fell into the "undesirable" class. Even after these amendments—which eliminated discriminatory criteria based on race, religion, culture, language and national origin—disabilities and health impairments remained criteria for inadmissibility until the *Immigration and Refugee Protection Act* was proclaimed. (2001).

Neither the new *Immigration and Refugee Protection Act* nor the legislation it replaced contains a definition of disability. However, the evolution of the inadmissibility criteria is important to this discussion. The original intent of the Act was not to refuse applicants because of disability. The legislation was mainly concerned with medical conditions that would place "excessive demands" on Canada's publicly funded health and social services.

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[13] The 1990 *Americans with Disabilities Act* (ADA) does not regard persons as having disabilities if their functional limitations have been accommodated. Recent U.S. Supreme Court decisions involving the ADA support this definition.

In the new *Immigration and Refugee Protection Act*, the inadmissibility criteria, which are listed in section 38, use the words "health grounds" instead of the term "disability." As a result, admissibility is now clearly based on an applicant's health, not the presence or absence of a disability. Section 38 states as follows:

> (1) A foreign national is inadmissible on health grounds if their health condition
>
> a. is likely to be a danger to public health;
> b. is likely to be a danger to public safety; or
> c. might reasonably be expected to cause excessive demand on health or social services.

In determining inadmissibility, a complex formula is used to project the cost of an applicant's health condition. The cost is considered to cause "excessive demand" if it is likely to exceed the average cost of caring for a Canadian citizen or permanent resident.

1.5 Broadcasting Act

The *Broadcasting Act* (1991) sets out Canada's broadcasting policy. The Act is administered by the Canadian Radio-television and Telecommunications Commission (CRTC), the body that regulates and supervises the Canadian broadcasting system.

Paragraph 3(1) (*p*) of the Act states that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose." Although the Act does not define disability, the main impairments that the broadcasting system has targeted for accessibility are visual and hearing impairments.

In the 1996 report of the Federal Task Force on Disability Issues, recommendation 23(d) requested that the CRTC "ensure access to federally regulated broadcasting for people with disabilities, including those with visual and hearing impairments."[14] Major cable and satellite services are required by the CRTC to provide Voice Print, a 24-hour news and information reading service, to their English-language subscribers. *La Magnétothèque* provides a similar French-language service. Also major broadcasters like CBC, CTV and Global must supply closed captioning for at least 90 percent of their programming, including 100 percent of local news.

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[14] Federal Task Force on Disability Issues, "Legislative Reform—A Responsive Government," chapter 4 of *Equal Citizenship for Canadians with Disabilities: The Will to Act* (Ottawa: Human Resources Development Canada, 1996), available on HRDC Web site; http://www.hrdc-drhc.gc.ca/sdd-dds/odi/documents/taskForce/english/report/ch4txt.html

1.6 Canada Transportation Act

The *Canada Transportation Act* (1996) does not specifically define disability. The Act does, however, address accessibility and obstacles. Section 5 declares that "a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities" is essential in Canada. According to subparagraph 5(*g) (ii)*, one of the Act's objectives is that the transportation system, "as far as is practicable," should not present "an undue obstacle to the mobility of persons, including persons with disabilities."

As well, the Canadian Transportation Agency (CTA), the body that administers the Act, includes the goal of an "accessible transportation system" in its mission statement.[15] The main disability-related sections of the *Canada Transportation Act* are contained in Part V of the Act, "Transportation of Persons with Disabilities."

Subsection 170(1) outlines the CTA's role in eliminating undue obstacles:

> (1) The Agency may make regulations for the purpose of eliminating undue obstacles in the transportation network under the legislative authority of Parliament to the mobility of persons with disabilities, including regulations respecting
>
> a. the design, construction or modification of, and the posting of signs on, in or around, means of transportation and related facilities and premises, including equipment used in them;
> b. the training of personnel employed at or in those facilities or premises or by carriers;
> c. tariffs, rates, fares, charges and terms and conditions of carriage applicable in respect of the transportation of persons with disabilities or incidental services; and
> d. the communication of information to persons with disabilities.

Section 171 of the Act states that the CTA and the Canadian Human Rights Commission must coordinate their activities concerning transportation for people with disabilities so that their policies and practices are complementary and so that they avoid jurisdictional conflict.

Section 172 gives the CTA the authority to investigate complaints from individuals who perceive undue obstacles to the mobility of persons with disabilities within the federal transportation network. By "undue obstacles," the *Canada Transportation Act* does not mean all obstacles. In other words, when considering how to accommodate people with disabilities, a carrier is allowed to make decisions that are appropriate for given circumstances.[16]

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[15] At the Canadian Transportation Agency Web site, http://www.cta-otc.gc.ca/about-nous/mission_e.html

In the highly publicized case *McKay-Panos v. Air Canada*, the complainant, Linda McKay-Panos—who in 1997 had to pay Air Canada for one and a half seats because of her size—argued that her medically certified obesity was a disability. In her argument she cited the three elements of disability included in the ICF (International Classification of Functioning, Disability and Health)—impairment, activity limitations and participation restrictions—and focused on the seat as constituting an obstacle.

Before considering the McKay-Panos application, the CTA first addressed the jurisdictional question of whether obesity is a disability for the purposes of Part V of the Canada Transportation Act. The CTA found that obesity per se is not a disability but that there may be individuals, who have a disability for the purposes of Part V because of their obesity. The CTA would continue to consider complaints from persons who are obese on a case by case basis. In 2002, the CTA found that Ms. McKay-Panos did not have a disability for the purposes of the accessibility provisions of Part V of the Act.

1.7 Canada Evidence Act

The *Canada Evidence Act* provides for the right of persons with disabilities to participate as witnesses in civil and criminal proceedings, subject however to some reservations in the case of persons with a mental disability. The Act does not define disability. It does, under section 6, state that a witness who has difficulty communicating because of a physical or mental disability can give evidence "by any means that enables the evidence to be intelligible."

Section 16 (1) of the Act states that, where a proposed witness is a person under fourteen years of age or a person whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine:

a. whether the person understands the nature of an oath or a solemn affirmation; and
b. whether the person is able to communicate the evidence.

Subsection 16(3) states that a person who does not understand the nature of an oath but is able to communicate the evidence may testify on promising to tell the truth. In *R. v. Khan* (1990), for example, the Supreme Court of Canada said that the two requirements for accepting unsworn testimony are sufficient intelligence and an understanding of the duty to tell the truth.[17]

However, under subsection 16(4), a person who can neither understand the nature of an oath nor communicate the evidence is not allowed to testify. Ability to communicate evidence refers to the person's capacity to perceive the event, commit it to memory and then answer questions about it.[18] Under the Act, therefore, mental disability is not in itself a cause for disqualifying a witness. What matters is whether or not the mental disability renders the witness incompetent to testify.

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[16] In the matter of *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25, at pp. 40-41, the Federal Court of Appeal commented on section 3 of the *National Transportation Act, 1987*, R.S.C., 1985, c. 28 (3rd Supp.). The relevant sections of this provision are similar to section 5 of the CTA provision.

[17] *R. v. Khan*, [1990] 2 S.C.R. 531; 59 C.C.C. (3d) 92 (S.C.C.).

The Act also includes subsection 16(5), which states that anyone who challenges the mental capacity of a proposed witness who is 14 years old or more "has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation."

Key Government of Canada Programs

(including tax measures)

As stated earlier not all programs available to persons with disabilities are described in this report. This report focuses on programs that are specifically targeted to persons with disabilities or to those who care for them. The disability component of the Social Development Partnerships Program (SDPP-D) was reviewed but not included in this report as it aims to help national disability organizations develop their capacity to represent the views of persons with disabilities. The SDPP-D does not explicitly define disability.

The following three sections provide a technical description of these programs based on existing policies, regulations and legislation.

2 ACTIVITIES OF DAILY LIVING AND ASSISTANCE IN THE HOME

Daily activities such as getting dressed, feeding oneself or walking to school can present enormous challenges for persons with disabilities.

This section examines key disability-related income tax credits that address the reduced ability to pay tax of people with disabilities and those who care for them i.e., the disability tax credit and its supplement for children, the caregiver credit and the infirm dependant credit. The *Income Tax Act* sets out the legislative provisions for these benefits.

The medical expense tax credit was also reviewed but not included in this report as it does not define disability and is geared to all taxpayers who submit receipts for eligible medical expenses over a set amount. Eligible medical or disability-related expenses include for example, artificial limbs, wheelchairs, guide dogs and other assistive aids, and the services of medical practitioners, dentists, nurses, and attendant care for a patient who has a severe and prolonged mental or physical impairment. All tax measures are administered by the Canada Customs and Revenue Agency (CCRA) and the Department of Finance is responsible for tax policy.

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[18] Alan W. Mewett, *Witnesses* (Toronto: Carswell, 1991), cited in "The Oath and the Promise to Tell the Truth," *Consultations and Outreach*, Department of Justice Web page (last updated 20 December 2002), http://canada.justice.gc.ca/en/cons/accea/A.html.

This section also describes a program that provides financial assistance for adaptations to improve a home's accessibility and use by the occupants with disabilities.

2.1 Disability Tax Credit (DTC) and its supplement for children

The disability tax credit (DTC) first appeared in 1944 as a special deduction for blind people who did not claim an amount elsewhere for attendant care. In 1949 the deduction was extended to people confined to a bed or wheelchair. The eligibility criteria were not changed again until 1986 when the Government of Canada broadened them to include all individuals who are "markedly restricted" in a "basic activity of daily living" (see definition on page 23). The new criteria mirrored the language in Canada's first Health and Activity Limitation Survey (1986), which in turn borrowed from the WHO's 1980 ICIDH. In 1988, as part of tax reform, the deduction became a non-refundable tax credit.

The DTC provides tax assistance to individuals who, due to the effects of a severe and prolonged mental or physical impairment, are markedly restricted in a basic activity of daily living, or would be if not for extensive therapy to sustain a vital function, as certified by a medical practitioner. The DTC recognizes the impact of non-itemizable disability-related costs on an individual's ability to pay tax. Because people with severe and prolonged impairments incur disability-related expenses that others do not, they are less able to pay tax, all other things being equal. In 2003, the DTC may reduce a claimant's federal tax by up to $1 005.

The DTC provides tax assistance for disability-related costs that are difficult to itemize (the DTC does not require claimants to itemize expenses). For example, people with severe mobility disabilities may pay more for their transportation, but it may be hard to identify what portion of the total cost is due to the disability. The DTC is meant to complement the medical expense tax credit, which provides tax assistance for above-average medical and disability-related expenses that can be itemized.

An individual whose taxable income is too low to fully use the DTC can transfer the unused portion to a supporting relative.

Families caring for children with severe and prolonged impairments may receive additional tax assistance through a supplement to the DTC. For taxation year 2003, the supplement provides additional federal tax reduction of up to $586 or 16 percent of $3 663. The supplement amount is reduced dollar for dollar by the amount of child care expenses or attendant care expenses claimed for tax purposes over $2 145. Both amounts are fully indexed. The provinces and territories provide similar tax credits.

In addition, in 2003, the Government committed $50 million per year for a new Child Disability Benefit (CDB) that will provide up to $1 600 annually for a child qualifying for the DTC. It is expected that 40,000 families per year will be assisted by this benefit. This benefit is designed to assist low- and modest-income families caring for children with severe disabilities so that they get the best possible start in life.

Definition of Disability

The *Income Tax Act* does not define disability. It describes the type of impairment (i.e. severe and prolonged), and the effects of that impairment. Specifically, subsection 118.3(1) of the *Income Tax Act* provides that an individual is eligible for the DTC if the individual has a severe and prolonged mental or physical impairment and the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted if not for life-sustaining therapy required to be administered three times per week for a total duration averaging at least 14 hours a week.

Subsection 118.4(1) of the Act defines terms such as "prolonged," "markedly restricted" and "basic activity of daily living":

a) an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months;
b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;
c) a basic activity of daily living in relation to an individual means
    (i) perceiving, thinking and remembering,
    (ii) feeding or dressing oneself,
    (iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual,
    (iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,
    (v) eliminating (bowel or bladder functions), or
    (vi) walking; and
d) no other activity, including working, housekeeping or a social or recreational activity, is considered a basic activity of daily living.
e) feeding oneself does not include
    (i) any of the activities of identifying, finding, shopping for or otherwise procuring food, or
    (ii) the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime; and
f) dressing oneself does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing.

◆ Eligibility Criteria and Assessment

An individual who wants to claim the DTC must complete the disability tax credit certificate (Form T2201). Both the claimant and a medical doctor or other qualified professional must sign the certificate. It is the effect of the impairment on the ability to perform one of the basic activities of daily living (which may differ between individuals) rather than the ailment or condition itself, which determines whether an individual is eligible for the disability tax credit.

Paragraph 118.3(1) (a.2) of the *Income Tax Act* lists the medical professionals (summarized below) who can certify that an individual's impairment has a severe and prolonged mental or physical impairment, the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted but for the receipt of life-sustaining therapy. The types of impairments and the professionals who should assess and certify their severity are as follows:

Medical professional	**Type of impairment**
Medical doctors	All impairments
Optometrists	Vision
Audiologists	Hearing
Occupational therapists	Walking, feeding, dressing
Psychologists	Perceiving, thinking and remembering
Speech-language pathologists	Speaking

The disability tax credit certificate outlines the DTC eligibility criteria and asks the certifying professional a series of questions, based on the criteria, about the claimant's impairment. Each question, along with its answer, serves to measure how the impairment affects the individual's ability to perform activities. The questions all concentrate on measuring ability to function rather than the impairment itself, with one exception. In the case of seeing, the question stipulates a specific measurement of visual acuity, which corresponds to a medical diagnosis of the eye condition itself (see Table 1 on page 25).

To begin the claim process, the claimant must submit the completed disability tax credit certificate to their tax centre. Tax centre officials review the form, contacting either the claimant or the qualified professional if they need clarification or if information is missing. They then determine the claimant's eligibility. Complex applications are referred to CCRA headquarters for review and decision by a medical advisor.

Because impairments may vary in nature, DTC eligibility is approved on either an indeterminate or a temporary basis. If the approval is temporary, the individual must reapply at the end of the approval period.

Table 1: Measurement of Eligibility Criteria as per DTC Certificate (Form T2201)

Seeing	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual is blind, i.e., his or her visual acuity in both eyes with proper refractive lenses is 20/200 or less with the Snellen Chart or an equivalent, or the greatest diameter of the field of vision in both eyes is less than 20 degrees.
Walking	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual cannot walk 50 metres on level ground, or takes an inordinate amount of time to do so. (The 2003 version of Form T2201 changes the 50-metre distance to 100 metres and this distance is used only as an example of being markedly restricted.)
Speaking	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual cannot speak so as to be understood by a person familiar with the individual, in a quiet setting, or takes an inordinate amount of time to do so.
Perceiving, Thinking and Remembering	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual cannot perceive, think and remember (e.g., cannot remember simple instructions or cannot manage or initiate personal care without constant supervision), or takes an inordinate amount of time to do so. (The 2003 version of Form T2201 indicates that the individual is markedly restricted ". . .unable to perform the mental functions necessary for everyday life by himself or herself " and provides examples of what is considered mental functions necessary for everyday life.)
Hearing	All or almost all the time, even with therapy and the use of appropriate devices, the individual cannot hear so as to understand another person familiar with the individual, in a quiet setting, or takes an inordinate amount of time to do so. (The ability to lip-read or use a signboard is not considered a device.)
Feeding or Dressing	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual cannot feed or dress him/herself, or takes an inordinate amount of time to do so. Feeding includes the preparation of food, except for additional preparation time due to a dietary restriction or regime.
Eliminating	All or almost all the time, even with therapy and the use of appropriate devices and medication, the individual cannot personally manage bowel or bladder functions, or takes an inordinate amount of time to do so.
Note: An individual may be eligible for the DTC if the individual would be markedly restricted as described above except for required therapy to sustain a vital function. The therapy has to be administered at least three times per week for a total duration averaging at least 14 hours per week, and it cannot reasonably be expected to be of significant benefit to persons who do not have the individual's impairment.	

Based on 2003 federal budget figures, the DTC accounts for about $400 million a year out of just over $1 billion in tax measures for persons with disabilities or above-average medical expenses and those who care for them.

For a discussion of the issues and concerns surrounding the DTC eligibility criteria, see Part III and Annex A.

As announced in Budget 2003, a Technical Advisory Committee on Tax Measures for Persons with Disabilities was established for an 18-month period (April 2003 to October 2004) to advise the Ministers of Finance and National Revenue on the eligibility and administrative criteria for the DTC, as well as other tax issues affecting persons with disabilities.

2.2 Infirm Dependant Credit

The infirm dependant credit (non-refundable) provides tax assistance to individuals for supporting an infirm dependant child, grandchild, parent, grandparent or relative (brother, sister, aunt, uncle, niece or nephew) of the individual (or the spouse or common-law partner of the individual) who is 18 years of age or older before the end of the year. The purpose of the credit is to recognize the reduced ability to pay tax of the individual providing support. Paragraph 118(1)(d) of the *Income Tax Act* provides that an individual is entitled to the infirm dependant credit for supporting a child, grandchild, or relative of age 18 or older, if that person was dependant on the individual because of mental and physical infirmity.

For the 2003 tax year, the maximum credit is $586 (16 percent of $3,663). The credit will be reduced by the net income of the dependant that is over $5,197, and the amount of the credit claimed for an eligible dependant (previously known as the equivalent-to-married credit), if claimed by the individual for the same dependant.

◆ Definition of Disability

The term "mental or physical infirmity" is not defined in the *Income Tax Act*. Appendix A of the Interpretation Bulletin IT-513R Personal Tax Credits (1998) discusses how mental and physical infirmity will be interpreted. Generally, terms not specifically defined in legislation take on their ordinary meaning.

◆ Eligibility Criteria and Assessment

There are two aspects that are key when CCRA considers whether or not a person is dependant on an individual or an individual and others for support because of the person's physical or mental infirmity. The dependency must be brought on solely by reason of the infirmity, and the degree of infirmity must be such that it requires the person to be dependant on the individual for a considerable period of time. In addition, the individual has to show that he or she is supporting the dependant (i.e. providing the necessary maintenance, or the basic necessities of life such as food, shelter, and clothing on a regular and consistent basis). Also, the dependant person must be 18 years or older, and if the dependant is a parent, grandparent or a relative, he or she must be resident in Canada at any time in the year. The dependant's net income must be less than $8,860 (for 2003 tax year).

Individuals who want to claim the infirm dependant credit should complete the appropriate part of schedule 5 of the federal individual income tax return, which requests detailed information of the dependant (name, address, date of birth, relationship to the claimant, net income, nature of the infirmity and amount of the claim). They should also obtain a signed statement from a medical doctor that gives the nature, commencement, and duration of the dependant's infirmity. These supporting documents are to be submitted if requested by CCRA.

2.3 Caregiver Credit

The caregiver credit (non-refundable) provides tax assistance to individuals providing in-home care for (a) a child, grandchild, or dependant relative (brother, sister, aunt, uncle, niece or nephew of the individual or the spouse or common-law partner of the individual) who has a mental or physical infirmity and who is 18 years old or older, or (b) a parent or grandparent who is age 65 or older. For the 2003 tax year, the maximum credit is $586 (16 percent of $3,663). The credit will be reduced by the net income of the dependant that is over $12,509 and the amount of the credit claimed for an eligible dependant (previously known as equivalent-to-married credit), if claimed by the individual.

◆ Definition of Disability

As indicated above, "mental or physical infirmity" is not defined in the *Income tax Act*.

◆ Eligibility Criteria and Assessment

To qualify for the caregiver credit, the parent or grandparent must be age 65 or older; the child, grandchild or relative must be age 18 or older and be mentally or physically infirm [paragraph 118(1)(c.1)]. The individual, either alone or with another person must have maintained a self-contained dwelling, which is the ordinary place of residence of the individual and the dependant. Except for a child or grandchild, the dependant must be resident in Canada during the year. As for the infirm dependant credit, the infirmity has to be for a considerable period of time. In addition, the dependant's net income has to be less than $16,172 (for 2003 tax year).

Individuals cannot claim both the infirm dependant credit and the caregiver credit for the same dependant.

Individuals who want to claim the caregiver credit should complete the appropriate part of schedule 5 of the federal individual income tax return (see application information relating to the infirm dependant credit).

2.4 Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D)

Under the Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D), the Canada Mortgage and Housing Corporation offers financial assistance to to homeowners and landlords to modify dwellings occupied or intended for occupancy by low-income persons with disabilities in all regions. RRAP-D is also available to Aboriginals on reserves.

◆ Definition of Disability

RRAP-D uses the WHO definition of "disability", i.e "any restriction or lack (resulting from an impairment) of ability to perform an activity in a manner or within the range considered normal for a human being. "

There are six major categories of disabilities that have implications for housing: visual, hearing, cognition, mobility, allergy-related and other (e.g. haemophilia, cystic fibrosis) disabilities.

◆ Eligibility Criteria and Assessment

Homeowners can apply if their house is under a certain value and their household income below a certain ceiling, depending on the location and size of their household. Landlords can apply if their rents are below certain levels and if their units are occupied by tenants whose incomes are below a certain ceiling. Funding is also available to landlords of rooming houses with rents below certain levels. The maximum loan amount (or the amount forgiven) depends on where the property is located. Properties must meet minimum health and safety standards. The assessment to determine the best adaptations required can be completed by the homeowner, the tenant or an occupational therapist, health care worker or other social services professional.

The applicant must confirm that there is a member of the household with a disability, including a description of the disability and the modifications required. If it is not evident that the accessibility modifications relate to the disability, CMHC may request confirmation from a qualified expert, such as a physician or physiotherapist.

CMHC also provides financial assistance for minor home adaptations to seniors 65 years old or over. The Home Adaptations for Seniors' Independence (HASI) helps homeowners and landlords pay for home adaptations to extend the time that low-income seniors can live in their homes independently. The adaptations should be minor items that meet the needs of seniors with an age-related disability. Other conditions also apply.

In some regions, funding for these programs is provided jointly by the Government of Canada and the provincial or territorial government.

3 INCOME

To participate fully in society, people need an adequate income. Having a disability can reduce people's ability to support themselves through employment. For persons with disabilities, the added costs of disability can reduce the amount of income available for other needs. Governments have acknowledged the need for an income safety-net that recognizes individual work efforts and that provides financial help if self-support is impossible or insufficient to meet basic needs. Provinces and territories provide basic income support through programs such as social assistance.

This section describes the two federal disability programs that focus on providing income maintenance (i.e. earnings replacement) and financial assistance to people with disabilities.

3.1 Canada Pension Plan (CPP) Disability Benefit

The Canada Pension Plan (CPP) was adopted in 1966. The CPP administered by HRDC provides for the payment of benefits when a contributor retires, becomes disabled or dies. The CPP disability benefit (CPPD) is an integral part of the CPP and is the largest long-term disability program in Canada.

The CPPD is a monthly benefit available to eligible CPP contributors with a severe and prolonged disability that prevents them from regularly working at any job. The CPPD also pays a monthly benefit to the dependant children (under the age of 18) of disability beneficiaries. Children between 18 and 25 may also be eligible for benefits if they are attending a recognized school or university full-time. In 2001-2002, over $2.7 billion was paid to over 280 000 adults and some 90 000 of their dependant children.

◆ Definition of Disability

The *Canada Pension Plan Act* is the legislation that governs the CPP. This Act in subsection 42(2) defines who is considered disabled and when a person is deemed to have become or ceased to be disabled. It also defines severe and prolonged:

a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,
    (i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and
    (ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and
b) a person shall be deemed to have become or to have ceased to be disabled at such time as is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case

> shall a person be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

CPP policy guidelines define "severe" for the purpose of subsection 42(2) as meaning that the disability regularly prevents the individual from working in any substantially gainful occupation, and "prolonged" as meaning that the disability is likely to be long-continued and of indefinite duration or likely to result in death. "Incapable" is defined as not being able to work in any substantially gainful occupation as a result of the disability. "Regularly" means that the disability is persistent almost to the point of being continuous or uninterrupted so that the capacity for any substantially gainful work is not demonstrated. "Pursuing" is actually engaging in an occupation, not just looking for work. "Any" work means an occupation in which the applicant might reasonably be expected to be employed whether or not it is in their previous occupation. Finally "substantially gainful occupation" means the ability to perform employment that is productive and profitable, measured in part by a dollar amount which is set annually. Earnings alone do not determine the capacity to work on a regular basis; functional capacity, productivity and performance are also assessed.

◆ Eligibility Criteria and Assessment

There are three factors that need to be taken into account in assessing an individual's entitlement to the CPP disability benefit: age, contributions to the plan and whether the disability meets the legislated definition. In order to be entitled to a CPP disability benefit, individuals must be between 18 and 65 years old; they must have made sufficient contributions and contributed to the CPP for a specified period, currently four of the last six years; and they must have a disability as defined by the CPP legislation.

To apply for the CPPD, individuals must complete an application form and a questionnaire. They must also supply a medical report from their physician. These documents and any other supporting information are reviewed to determine whether an applicant meets the age and contribution criteria. The application is then sent for medical adjudication.

Adjudicators, who are trained health professionals, then assess whether these applicants meet the disability criteria as defined in the legislation. Although medical information is key in their assessment, the decision is based on an assessment of the whole person, not just the specific diagnosis. They consider factors such as the applicant's age, education and work history, and they may also consult employers, schools, therapists, nurses and other third parties to learn more about the applicant's functional capacity. Complex applications may also be reviewed by CPP physicians.

For a discussion of the issues and concerns surrounding the CPPD, see Part III and Annex A.

3.2. Veterans Disability Pension Program

Veterans Affairs Canada (VAC) administers a disability pension program that is governed by the *Pension Act*. Pension payments are provided to individuals whose disabilities result from military service, during either wartime or peacetime.

Canadians may be eligible for disability pension benefits if they have a permanent disability resulting from an injury or disease that is attributable to, incurred during, or was aggravated by service during the First World War, the Second World War, the Korean War, a Special Duty Area or a Special Duty Operation.

Canadians may also be eligible for a disability pension if they have a permanent disability that arose out of, was aggravated by, or is directly connected with peacetime Regular or Reserve Force service in the Canadian Forces.

The disability pension award is based on the extent of the disability, as medically assessed and certified, and is paid according to rates set out in the *Pension Act*. In addition, survivor benefits are payable to eligible dependants.

Depending on their circumstances, individuals awarded the disability pension may be eligible for a range of other benefits, including a clothing allowance, an attendance allowance, an exceptional incapacity allowance and the Veterans Independence Program (VIP). VIP provides an array of health and personal support services, as well as treatment benefits such as hearing and visual aids, dental services, medical supplies, prescription drugs and special equipment.

◆ Definition of Disability

The Veterans Disability Pension program is one of the few Government of Canada programs that truly define disability. In subsection 3(1) of the current *Pension Act*, disability is defined as "the loss or lessening of the power to will and to do any normal mental or physical act." [19]

◆ Eligibility Criteria and Assessment

To receive the Veterans Disability Pension, individuals must apply and be found eligible. There are two key eligibility criteria: entitlement and the extent of the disability, i.e., assessment.

Entitlement—that is, a relationship between the stated disability and military service—is decided first. VAC adjudicators decide on entitlement with the help of the Department's entitlement eligibility guidelines. Then, they assess the extent of the disability. This assessment is based on medical reports submitted by the applicant, reports on file, or in some cases a medical examination of the applicant. Adjudicators consult the department's Table of Disabilities in conducting this assessment.

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[19] In the *Pension Act* of 1919, disability meant a wound, injury or disease.

VAC adjudicators must be able to determine if a new disability is a direct consequence of previous service and is therefore pensionable. In complex cases, adjudicators consult on-staff medical advisors.

The entitlement eligibility guidelines are policy statements meant to help applicants prepare and submit their forms and to help adjudicators determine entitlement. They provide guidance in determining the relationship of a client's medical condition or disability to military service. The guidelines are not a statutory instrument and are therefore not mandatory or binding. They allow adjudicators to exercise discretion. The entitlement eligibility guidelines include descriptions of commonly claimed medical disabilities as well as comments on diagnoses, anatomical and physiological factors and clinical features (though the guidelines are not meant to constitute a textbook of medicine or causation). The guidelines also cover pension considerations such as the relationship to other disorders, and in some cases they deal with assessment issues. The guidelines are based on medical literature and on similar guidelines from disability compensation bodies in other countries.

The Table of Disabilities is a statutory instrument, legislated by subsection 35(2) of the *Pension Act*. Adjudicators use the table to assess the extent of a disability so as to establish the amount of pension to pay out.

The Table of Disabilities has been revised and updated periodically over the years. For instance, amendments were made to the psychiatric chapter in February 2000. VAC conducts ongoing revisions to the table of disabilities based on consultation with stakeholders. The new table will adopt an assessment principle that more clearly expresses and measures both the medical impairment and the quality-of-life considerations associated with it.

4 EMPLOYMENT AND LEARNING

For most Canadian adults, working is an important way of participating in the community and society. However, surveys have found that persons with disabilities are only half as likely to be employed as those without disabilities. In addition, they need more time to find work than those without disabilities. Parents with disabilities with young children have an even harder time to find paid work because of their child-care responsibilities.

This section presents definitions of disability in key Government of Canada programs or tax measures that focus on the participation of people with disabilities in the workforce.

Other programs and services such as Employment Benefits and Support Measures were reviewed but not included in this report as they are measures designed to help all unemployed Canadians return to work. No definition of disability applies, and there are no disability-specific eligibility criteria. The amount of support provided to people with disabilities is tracked based on beneficiaries' self-identification. The Refundable Medical Expense Supplement that helps to offset the loss of disability supports to individuals when they enter the paid labour force was also reviewed but not described because it also targets the entire population.

4.1 Attendant Care Deduction

The attendant care deduction recognizes the reduced ability to pay tax of taxpayers with disabilities who incur costs for care by an attendant to enable them to earn business or employment income, or to go to school.

◆ Definition of Disability

The *Income Tax Act* does not define "disability".

◆ Eligibility Criteria and Assessment

Individuals who want to claim the attendant care deduction have to meet the eligibility criteria for the disability tax credit (DTC) (see section 1.1). In addition, they have to attend school or report earned income. For the purpose of the attendant care deduction, earned income includes self-employment income and amounts under section 5, 6 or 7 or paragraph 56(1)(n), (o) or (r) of the *Income Tax Act* (i.e. employment income, scholarships, bursaries, fellowships, and similar awards, research grant or any earnings supplement received under a project sponsored by a government in Canada to encourage employment or under a project sponsored under Part II of the *Employment Insurance Act* or any similar program). Individuals have to complete Form T929, *Attendant care expenses*, to calculate the allowable claim.

Even if the DTC is claimed by a supporting person or spouse, only the person with a disability may claim the attendant care expense deduction. The payment cannot be deducted if it was claimed as an expense under the Medical Expense Tax Credit (METC).

4.2 Opportunities Fund for Persons with Disabilities

Many persons with disabilities who are looking for work or want to develop their skills may have little or no labour force attachment and do not qualify for assistance under the Employment Insurance (EI) program. To fill this gap, and in response to the 1996 Scott Task Force report, the Opportunities Fund for Persons with Disabilities (OF) was created in 1997. Administered by HRDC, the fund helps unemployed people with disabilities prepare for, find and maintain employment or self-employment.

◆ Definition of Disability

The OF does not define disability. Applicants self identify.

◆ Eligibility Criteria and Assessment

To qualify, individuals must self identify as having a permanent physical or mental disability that affects their daily activities. They must also be unemployed, legally able to work in Canada and normally be ineligible for EI benefits.

Activities offered under OF parallel, but are not limited to, those delivered under the Employment Benefits and Support Measures (EBSMs) and allow clients access to at least the same services available under EBSMs. OF activities include: encouraging employers to hire workers with disabilities; providing assistance to persons with disabilities to help them obtain skills for employment; providing assistance to persons with disabilities to start their own business; and providing job experience leading to on-going employment. The OF also cooperates with disability organizations to find ways of integrating individuals with disabilities into jobs or self-employment, and to identify ways of addressing barriers to participation in the labour market.

Projects that qualify for funding under the OF may be approved for up to 52 weeks and extended to a total of 78 weeks. For employers, the funding helps offset participants' wages and other related costs. For participants with disabilities, the funding helps with costs such as living expenses, tuition, dependant care, disability-related costs and other personal supports. Guidelines call for harmonization of federal and provincial initiatives to avoid overlap and duplication. Participants must fill out an application. Disability organizations can also submit proposals for project-based funding.

Some OF funding ($3 million per year) is delivered through Aboriginal Human Resources Development Strategy (AHRDS). The strategy provides Aboriginal organizations with the flexibility to manage the funds according to local and regional needs of Aboriginal people and in this case, Aboriginal people with disabilities.

4.3 Employability Assistance for People with Disabilities (EAPD)

The EAPD, which began in April 1998, is an initiative based on bilateral agreements between the Government of Canada and each province. At the federal level, the initiative is administered by HRDC. Currently, there are no EAPD agreements with the territories.

The goal of the $193 million per year EAPD initiative is to provide funding to the provinces for a range of programs and services to help working-age adults with disabilities prepare for, obtain and retain employment. Programs and services eligible for EAPD funding must directly provide the skills, experience and related supports that individuals need to improve their employability. Discussions are ongoing between the Government of Canada and the provinces and territories to finalize a multilateral framework for labour market agreements for persons with disabilities which includes successor agreements to EAPD, and could include the territories.

◆ Definition and Eligibility Criteria

EAPD does not define disability. The provinces determine individuals' eligibility for EAPD programs and services, while the Government of Canada determines which programs are eligible for funding.

4.4 Vocational Rehabilitation Services – CPP Disability

New technologies, medical treatments and skills training are making it more and more possible for people with severe disabilities to re-enter the work force. The CPP Disability Vocational Rehabilitation Services under the responsibility of HRDC are designed to help people who receive a CPP disability benefit return to work.

◆ Definition and Eligibility Criteria

Individuals must be receiving CPPD and either self-identify or be identified by CPP staff. CPP Disability vocational rehabilitation case managers assess whether the client is an appropriate candidate for the services. Vocational rehabilitation services are provided by specialists in the client's community who will work with the case manager and the client to develop a vocational rehabilitation plan.

The services center on developing an individualized return-to-work rehabilitation plan for participants and could include services such as guidance to establish needs and skill sets, a return to work plan in consultation with the treating physician, skills retraining, and the development of job search skills. HRDC works with partners such as health care professionals, workers compensation boards and private insurance companies, local groups and employment counsellors. Participants will continue to receive their CPP disability benefits for up to one year while they search for a job. If they find a job, the CPP benefits will continue for the first three months after work begins. If they must stop working they may be able to use the fast-track reapplication process to reapply for disability benefits.

In addition, work incentives provide support to CPP disability beneficiaries who try to participate in the community or return to work. Beneficiaries can participate in volunteer work and attend school or university or continue to receive their disability benefits. Clients who have demonstrated the capacity for substantially gainful employment are given a 3-month paid work trial where they can work and continue to collect benefits. This helps clients test their ability to work without losing their benefits.

CPP disability also has a policy titled *Allowable Earnings* that allows beneficiaries to work to earn an income without losing their benefits. The Allowable Earnings amount in 2003 is $3,900 and this amount will be adjusted in future years.

Other programs such as Federal Workers Compensation Service (FWCS) and Employment Insurance (EI) sickness benefits were also reviewed. Both programs do not target persons with disabilities specifically and are therefore not described in detail in this report. The FWCS provides benefits and services to Government of Canada employees, merchant seamen and federal inmates to compensate for work-related injuries or diseases. The *Government Employees Compensation Act* that governs this program does not define disability. The EI sickness benefits are provided to people who cannot work (for periods less than a year) because of illness, injury or quarantine.

4.5 Canada Student Loans Program (CSLP)

The Canada Student Loans Program, administered by HRDC, promotes access to post-secondary education by providing loans to individuals who can demonstrate financial need. In addition, CSLP has a number of non-repayable Canada Study Grants for students with particular needs, including students with permanent disabilities.

The CSLP offers four provisions to assist students, three of which are targeted to students with permanent disabilities: a Permanent Disability Benefit for students experiencing repayment hardship due to a permanent disability (loan obligation terminated); a Canada Study Grant for Students with Permanent Disabilities; and a Canada Study Grant for High-need Students with Permanent Disabilities

The Canada Student Loan provision was also reviewed but it is not described in any detail in this report as it targets all Canadians (who must meet certain general criteria to be eligible). These criteria are adjusted to accommodate students with permanent disabilities. In order to be eligible for full-time student loan assistance, students with permanent disabilities must be enrolled in a minimum of 40 percent of a full course load. For students with permanent disabilities, satisfactory scholastic standard is defined as successfully completing 40 percent of a full course load.

◆ Definition of Disability

The CSLP define permanent disability through its regulations and legislation. According to subsection 2(1) of the *Canada Student Financial Assistance Regulations* (in accordance with the 1994 *Canada Student Financial Assistance Act*), permanent disability means "a functional limitation caused by a physical or mental impairment that restricts the ability of a person to perform the daily activities necessary to participate in studies at a post-secondary school level or the labour force and is expected to remain with the person for the person's expected life."

The regulations defines permanent disability only. Rather than referring to types of impairment, the definition refers to the *effect* of the impairment on the daily activities involved in participating in post-secondary studies. The labour force is included in the definition because a student's obligation to the program extends beyond the period of study to the period in which the loan must be repaid. As such, the regulations enable permanent disability to be assessed post-graduation.

Individuals who apply must first show that they meet the definition of permanent disability. The CSLP accepts any one of the following documents: a medical certificate, a psycho-educational assessment or a document proving that the applicant receives federal or provincial disability assistance. The document submitted should also include a statement describing the type of disability and whether it is expected to be permanent.

Additional medical information may be requested especially in the determination of the Permanent Disability Benefit.

◆ Eligibility Criteria and Assessment

4.5.1 Permanent Disability Benefit (loan obligation terminated)

If a borrower is accepted as a student with a permanent disability and subsequently, because of the disability, is unable to meet his or her repayment obligations without exceptional hardship, the borrower may apply to have the debt extinguished. The obligation to repay the principal and interest on direct loans (financed by the Government of Canada) is cancelled under subsection 43.1(1)(b) of the *Canada Student Financial Assistance*

Regulations, which states the following:

> (1) In each province participating in the student loan program established by the Act and that is financed by the government, all rights of the Minister terminate in respect of a borrower . . .
>
> (*b*) who is indebted under a direct loan, if the Minister is satisfied that the borrower, by reason of the borrower's permanent disability, is or will be unable to repay the loan without exceptional hardship, taking into account the borrower's family income.
>
> (2) In the circumstances set out in subsection (1), the Minister shall cancel the obligation to pay the principal and interest of the loan.

Similar provisions exist for loans held by financial institutions (prior to 2000). Before an individual applies to have the debt extinguished, the financial institution handling the repayment may first offer to amend the loan provisions to make repayment easier. If the individual still cannot pay without exceptional hardship, the applications are directed to the CSLP for assessment. The completed form (medical report and financial statement) will assist the CSLP in determining whether the individual qualifies for termination of his/her loan obligation by reason of a permanent disability.

For loans issued after 1995, the permanent disability must have occurred within 6 months of completing school. It must be demonstrated through the medical report and financial statement that the individual is unable to repay the loans without experiencing exceptional hardship.

4.5.2 Canada Study Grants for Students with Permanent Disabilities

Canada Study Grants for Students with Permanent Disabilities are designed to offset the exceptional education-related costs of a student (full-time or part-time) with permanent disabilities. The grant covers a range of education-related services and equipment, including note takers, tutors, oral or sign interpreters, attendant care for studies, specialized transportation to and from school, technical aids (computer, brailler), alternate formats (large print, Braille), and 75 percent of the cost of a diagnostic for learning disabilities, up to a maximum of $1,200.

Students would be required to provide written confirmation of the need for the disability-related services or equipment. This confirmation must come from either a vocational rehabilitation services case worker, an official from a centre for students with disabilities, or a guidance counsellor or financial aid administrator at the student's post-secondary institution. In addition, students must supply two estimates to support the extra expenses they are claiming, as well as receipts before the end of their period of study.

The Canada Study Grant for Students with Permanent Disabilities is authorized under Subsection 34 of the *Canada Student Financial Assistance* Regulations and provides up to $8,000 per loan year.

4.5.3 Canada Study Grants for High-need Students with Permanent Disabilities

In some cases, a full-time student (or part-time student) may have education and living costs which raise their financial need to an amount greater than the maximum amount of financial assistance available to them ($275 per week for full-time students, or the $4,000 lifetime maximum for part-time students). A second non-repayable Canada Study Grant for High-Need Students with Permanent Disabilities is also available in situations where the maximum financial assistance available to the student does not meet their assessed needs. This grant, authorized under Subsection 34.1 of the *Canada Student Financial Assistance Regulations,* is intended to assist in covering the costs of accommodation, tuition, books and other education-related expenses up to $2,000 per loan year. Eligibility for the CSG for High-need Students with Permanent Disabilities is determined during the assessment of the Canada Student Loan application.

If students have not already demonstrated that they do meet the Canada Student Loans Program's definition of permanent disability, they would be required to provide the proper documentation (see 3.6.1 above) when they apply for a Canada Study Grant.

While neither of these Canada Study Grants have to be repaid, they are taxable. Students will be issued a T4A to include with their next year's income tax return.

■ LINKS TO CONCEPTUAL MODELS

In sum, the disability-related programs and legislation described above use disability definitions or eligibility criteria that are based on the broad conceptual perspectives described earlier. The graph which appears below illustrates the evolution, interaction and tension between the three major disability conceptual models and the policy/program responses by the Government of Canada.

The disability policy and programs have different purposes and intents. The tension between programs that use definitions based on somewhat competing conceptual models makes pursuing the goal of a single, generic definition of disability difficult. Indeed, similar to the experience in other jurisdictions, the understanding of disability from the social and human rights perspective are broader than for entitlement to programs providing income support benefits. Not surprisingly, Government of Canada income support programs and tax measures tend to use eligibility criteria based on a combination of the medical and functional limitation approach. For example, both the CPPD and the DTC collect and process medically certified information on the type and severity of disability, assessed in terms of impairment that result in a certain degree of functional limitations. Not everyone can reasonably claim entitlement to disability-related income support, and tax relief.

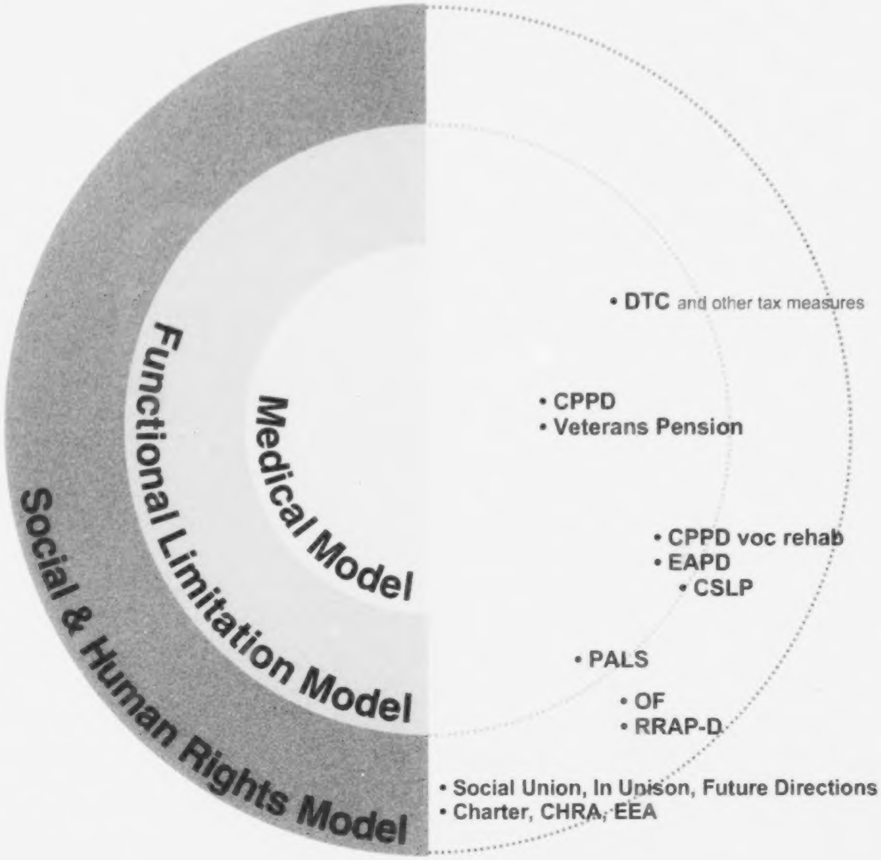
The social and human rights conceptions of disability have influenced more recent legislative, policy and program developments. Anti-discrimination legislation is perhaps the most prominent example of a legislative outcome based on this newer conception of disability. Of course, human rights legislation aims to include everyone with a disability, regardless of degree or type of limitation. Additionally, there are also examples of program developments from the social and human rights model. The Opportunities Fund for instance, focuses on removing social barriers by attempting to reduce the impact of disability-related economic and social disadvantages. As the next section elaborates, disability definitions, objectives and eligibility are heavily influenced by the interaction of these sometimes competing perspectives – the medical, functional limitation and social and human rights models.

Evolution, Interaction and Tension: Disability Models and Policy/Program Responses

● **Social & Human Rights Model**
Interaction between impairment, activity limitation and participation
Focus on social barriers

● **Functional Limitation Model**
Impairment, limits individual's ability to perform typical tasks
Focus on incapacity

● **Medical Model**
Impairment abnormality and deficiency within person
Focus on health condition


Medical Model
Functional Limitation Model
Social & Human Rights Model
• DTC and other tax measures
• CPPD
• Veterans Pension
• CPPD voc rehab
• EAPD
• CSLP
• PALS
• OF
• RRAP-D
• Social Union, In Unison, Future Directions
• Charter, CHRA, EEA

PART III – MAJOR ISSUES RELATED TO DEFINING DISABILITY

In conducting this review, it has become apparent that a single harmonized definition of disability may not be achievable nor desirable and that the issues that must be addressed are much broader than definitions. The following summarizes those major issues.

■ DEFINING DISABILITY IS COMPLEX

This report confirms that no single definition of disability exists at the federal level. Moreover, although there is a strong perception that there are numerous definitions of disability within GoC programs, there are only three GoC initiatives and one law that explicitly define disability. The Veterans Disability Pension Program defines disability as the "loss of the power to will and to do an act"; the Canada Student Loans Program defines it as a "functional limitation that restricts one's ability to perform daily activities associated with studies or work"; and RRHAP uses the World Health Organization definition i.e. "any restriction or lack (resulting from an impairment) of ability to perform an activity in a manner or within the range considered normal for a human being." The *Employment Equity Act* refers to persons "who have a long-term recurring impairment who are disadvantaged in employment or perceived by their employer to be disadvantaged because of their disability".

The other initiatives reviewed in this report define disability more implicitly by determining who is eligible through eligibility criteria. These programs focus on disability characteristics such as type, severity and duration and on the impact of the disability. While pursuing different objectives, the programs use some identical terminology to identify who they are targeting for support. For example, CPPD targets persons with a severe and prolonged disability who are incapable of working, while the DTC and the Attendant Care Deduction target persons with a severe and prolonged mental or physical impairment that restrict their ability to do a basic activity of daily living. The OF and the CSLP target individuals with a permanent physical or mental impairment. Two tax measures, the infirm dependant credit and the caregiver credit, relate to persons with a mental or physical infirmity without defining infirmity. The *CHRA* refers to a previous or existing disability including disfigurement and dependence on alcohol or drugs.

Many experts argue that there is no simple way of defining disability, and that one definition of disability that fits all circumstances may not be possible nor desirable. Disability is difficult to define because it is a multi-dimensional concept with both objectives and subjective characteristics. When interpreted as an illness or impairment, disability is seen as fixed in an individual's body or mind. When interpreted as a social construct, disability is seen in terms of social, economic or cultural disadvantages resulting from discrimination or exclusion.

In 2001, when the Sub-committee on the Status of Persons with Disabilities conducted a roundtable on the disability tax credit, a representative of a national disability organization indicated that they were not advocating one definition of disability because "it would not work". In 2002, when the US Congress held hearings on the challenges facing disability programs, expert witnesses reiterated the fact that different disability laws and policies have different goals and "a single definition of disability is neither recommended nor most effective." Most recently, in June 2003, experts participating in a panel discussion organized by the United Nations Ad Hoc Committee established to develop a convention to protect the rights and dignity of persons with disabilities emphasized as well that "locking in a definition of disability" was not recommended as disability situations continue to evolve with the advancement of technology and science and the various perspectives of disability.

■ DISABILITY IS A HORIZONTAL POLICY ISSUE

The GoC, provinces, territories and municipalities all provide a variety of programs and services to persons with disabilities. It is not easy to separate the issues and concerns related to disability programming within and between jurisdictions. Although this report focuses on GoC disability programs and laws, it is important to note that disability definitions, program objectives and eligibility criteria are different and complex across jurisdictions.

In Canada, some jurisdictions have very detailed statutory definitions while others have a detailed "working" definition, either explicitly or implicitly in policy and program documents. Most jurisdictions make reference to the duration of the disability, using tests which vary from "90 days", to "one year", to "permanent". Some jurisdictions make specific reference to including disabilities which occur "periodically for extended periods", or to disabilities which are "recurrent". Not everyone is entitled to disability-related social assistance. Their disability must lead to a significant limitation in some aspect of their lives (unemployability or restrictions in activities of daily living) before a claim is approved.

Every jurisdiction requires certification of the disability by a physician (or other health professionals). However, some jurisdictions automatically accept eligibility for CPPD as proof of disabled status, and do not require additional medical proof.

The definitions used for general policy discussions and in human rights legislation at the federal, provincial and territorial level are broader and more inclusive than the definitions used for entitlement to benefits, especially income and social assistance support programs.

Given that several departments provide disability related programs and services within each jurisdiction, ensuring program coherence within and across jurisdictions is an ongoing challenge.

■ PROGRAMS HAVE DIFFERENT OBJECTIVES AND ELIGIBILITY CRITERIA

In addition to jurisdictional complexities, many of the concerns attributed to multiple definitions relate to the fact that different programs have different objectives or purposes with specific eligibility criteria, some disability-related and others non-disability related such as age and income level.

Although Government of Canada initiatives may target the same type of disability i.e. severe and prolonged mental or physical impairment, as is the case for CPPD and the DTC, or permanent physical or mental impairment for OF and CSLP, they have very different objectives as well as eligibility criteria. For instance, CPPD aims to provide earnings replacement to a contributor who is no longer able to work, while the DTC provides tax relief to a person who is markedly restricted in his or her ability to perform a specific basic activity of daily living. OF assists individuals normally not eligible for Employment Insurance to find work and CSLP helps students pursue a post-secondary education. Clients must demonstrate that they meet the eligibility criteria which differ depending on the purpose of the program.

Eligibility criteria differ across Government of Canada programs and services in order to ensure the programs and services are effective and reach the intended beneficiaries. In fact, the eligibility criteria differ to address the different circumstances and needs of persons with disabilities.

The following table illustrates the different objectives of the programs and the type and severity of disability relevant to each.

Selected Government of Canada Disability Programs

Type of Disability → **Objectives ↓**	**Infirm**	**Severe and prolonged disability**	**Permanent disability**	**Long-term or recurring**	**Not specified**
Antidiscrimination				Employment Equity Act (self-identified)	
Daily living activities and assistance in home	Infirm Dependant Credit Caregiver Credit	Disability Tax Credit			
Income		CPPD	Veterans pension		
Employment Learning		CPPD vocational rehabilitation Attendant care deduction	OF (self-identified) CSLP (3 provisions)		EAPD*

* delivered by provinces who determine eligibility of individuals.

ASSESSING ELIGIBILITY IS A COMPLEX PROCESS

Assessing eligibility is also a complex process that varies from program to program. Some initiatives require only self-identification (Opportunities Fund, Employment Equity), while most others (CPPD, DTC, Veterans Disability Pension, CSLP) require medical and other information based on detailed questionnaires and forms that must be filled out by medical doctors or specialists.

Medical practitioners have acknowledged the challenges they face in filling out the various forms and understanding the different eligibility criteria of the programs as well as in trying to assess the type and severity of the disability. Assessing limitations to activities of daily living, for example, is difficult without an intimate knowledge of the context in which the patient lives. In addition, some severe disabilities, including mental disabilities, may be "chronic" and "recurrent" rather than "continuous," and consequently may not qualify for certain programs. Many have expressed concern because some programs do not recognize cyclical and intermittent disabilities.

Many witnesses before the Parliamentary Committees stressed the inadequacy of the forms and assessment process to adequately measure and assess the disabling impact of mental illnesses. The difficulty in assessing mental disability is evident in *Canada (Attorney General) v. Buchanan* (2002).[20] The appellant, Mr. Buchanan, had claimed the DTC in 1997 and 1998 but was assessed as ineligible. In this case, the court found that the psychiatrist certifying Mr. Buchanan's disability had misunderstood and misinterpreted the provisions of the *Income Tax Act* when completing the form required for DTC claims. Although the psychiatrist had indicated on the form that Mr. Buchanan was not "markedly restricted" in a basic activity of daily living, the court ruled that Mr. Buchanan was in fact eligible for the DTC.

Difficulties also arise with respect to the terminology used in assessing disabilities and determining program eligibility. Interpreting terminology consistently was an issue raised by some witnesses during Parliamentary Committee hearings and through appeals. For instance, confusion exists as to what is considered "severe and prolonged"—some witnesses were under the impression that "prolonged" is interpreted differently for the CPPD and the DTC. This is, in fact, not the case as both are interpreted to mean 12 months or more. For the DTC, prolonged is defined in the *Income Tax Act* and means that the impairment has to last, or be expected to last, 12 months or more. The legislation that governs the CPPD defines prolonged as "likely to be long continued and of indefinite duration or is likely to result in death". However, the CPPD policy provides additional clarification that the disability must continue for 12 months or more. This example demonstrates that there is a need for the Government of Canada to clarify program eligibility requirements.

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[20] 2002 F.C.A. 231 (31 May 2002).

Courts provide direction:
Recent court decisions have provided some direction concerning disability definitions. As noted earlier, the Supreme Court in Boisbriand gave guidance in the human rights context. In another case, the Federal Court decision in Villani (August 2001) provided direction on the legal test for the CPP definition of disability. This was the first time a higher level court provided such direction. The Villani decision touched on aspects of disability such as the primacy of the medical condition in decision making, consideration of personal characteristics as well as taking into account an applicant's efforts to work and the notion of employability.

The subsequent Federal Court decision of Rice (January 2002) clearly stated that socio-economic factors such as labour market conditions, or factors such as where the claimant lives, are not relevant to the assessment of severity of a disability for CPP purposes.

Recent Federal Court decisions relating to CPP Disability (i.e., Angheloni, Inclima, Quesnelle, Scott (2003)) further reinforce the direction provided in Villani and Rice. These decisions do not expand CPP eligibility. These decisions describe the importance of a thorough analysis of all of the evidence (medical and employability) and recognize the requirement for objective evidence and the obligation to provide well documented reasons for the decision. Where there are uncertainties or ambiguities with respect to statutory definitions or eligibility criteria, courts and tribunals will generally attempt to interpret in a manner that provides guidance as to how they should be applied in the specific context at issue.

■ THERE IS A NEED FOR IMPROVED COMMUNICATION AND AWARENESS

Implicit in all the confusion and misunderstanding between definitions, objectives and eligibility criteria is the need for more effective communication and awareness by the Government of Canada. For example, recent PALS (Participation and Activity Limitation Survey) data indicate that many Canadians are unaware of their situation with respect to the DTC. Indeed about 925,000 Canadians with activity limitations indicated that they did not know that the DTC existed (these tended to be persons with more severe disabilities). However, many Canadians depend on others to complete their tax forms and some may not be fully aware of the details regarding their returns, and may in fact be receiving the credit. More clear descriptions of the various disability programs and who they target are required for both clients and the medical professionals that must provide medical information.

PART IV – CONCLUSION

Disability is a multi-dimensional concept with both objective and subjective characteristics. A single harmonized "operational" definition of disability across federal programs may not be desirable or achievable. And, the scope of solutions to address the broader issues identified go beyond definitions.

As this report demonstrates, disability concepts have evolved over time and have been subjected to differing conceptual models and understandings. It is not surprising, therefore, that disability definitions found in current Government of Canada policies, programs and benefits are complex. This report confirms that no single definition of disability exists at the federal level. Moreover, although there is a perception that there are numerous definitions of disability within GoC programs, there are only three GoC programs targeted to persons with disabilities that specifically define disability; the other programs focus on certain characteristics of the disability, i.e. severe or permanent. All enacted Canadian human rights laws cover both physical and mental disabilities and only the *EEA* explicitly defines the term "disability".

The concerns attributed to definitions relate more to eligibility, assessments and communication. As this report demonstrates, complexity, horizontality and eligibility are three elements that create a set of tensions that are not easily disentangled. Moreover, tension exists between the evolution of the perspectives of disability and the operational administration of programs. The social and human rights model which is evident in programs such as the Opportunities Fund contrast with the medical and functional limitation approaches that are inherent in the legislation that guides long-standing programs such as the DTC, the CPPD, and the Veterans Pension Program. Recognition of social factors is becoming more and more apparent. For example, in the growing area of disability management and return to work programs, medical professionals are working in multidisciplinary teams to ensure the impact of both impairments and social barriers are mitigated to ensure an early and safe return to work for injured and disabled workers.

Despite the complexities associated with understanding disability definitions and overcoming the inherent tensions among the three conceptual models, the Government of Canada recognizes that efforts must be undertaken to relieve some of the tensions in policy and program responses.

Government of Canada Actions

Since the original recommendation to harmonize disability definitions at the federal level was made by the Parliamentary Committee in their report *A Common Vision*, a number of concrete actions have been (or will be) taken to ensure that persons with disabilities can more easily access the GoC programs, services and benefits to which they are entitled.

IMPROVING THE HORIZONTAL MANAGEMENT OF DISABILITY PROGRAMS

A Common Vision (2001) and other Parliamentary reports focused attention on the need for greater program coherence across GoC disability programs and policies. Improving program coherence is a viable alternative to harmonizing definitions and more likely to address a broader array of issues.

An interdepartmental Assistant Deputy Ministers Steering Committee (ADMSC) was set up in 2000 to advance the federal disability agenda. More recently, a sub-committee and working groups have been established under the ADMSC to work on key priorities and foster greater policy and program coherence across the GoC.

In addition, HRDC, as lead department on disability issues, is working on a number of fronts to increase synergy and coherence of its disability programs within the department, throughout the GoC and with provinces and territories.

HRDC is currently reviewing its program management structure using an approach based on a client or citizen perspective. In an effort to increase coherence in its disability policies and programs, HRDC has also established the Directors of Disability Forum, an intradepartmental committee that meets regularly to improve the understanding of the various disability programs, identify opportunities for synergy and ensure better coordination of activities such as consultations with clients and non-governmental organizations. An internal workshop was held in September 2003 to develop a specific work plan to enable HRDC to achieve greater coherence for its disability programs. Producing specific communication products for both clients and program officers and improving service delivery through better linkages between programs and with clients were some of the deliverables identified by participants. For example, the OF and CPPD programs are exploring possibilities of offering more integrated services to their common clients. Simple tools like a consultation calendar will help reduce the demands on common clients and identify opportunities for synergy. A program and services roadmap would also help guide both staff and clients.

Moreover, as part of its ongoing initiative to modernize services for Canadians and its continuing discussions with the provinces and territories on disability policy and program delivery issues, HRDC will continue to encourage the development and dissemination of comprehensive information on disability policies and programs.

LISTENING TO CANADIANS AND CONSULTING EXPERTS

The GoC consults with persons with disabilities and the organizations that represent them on a regular basis. The CCRA began consultations with the disability and medical communities in May 2002 with respect to administrative issues related to the DTC. In 2003, the CCRA conducted in-depth consultations with the same groups. As a result, a revised version of the DTC application form, vetted through these two communities and focus-tested with medical practitioners, will be available for the 2003 taxation year. The

CCRA is committed to continuing the consultations on an ongoing basis with these communities and with other GoC departments to help improve understanding of the eligibility criteria both in the short and long terms.

The CCRA is also committed to a continuous process of improvement with respect to all its dealings with clients, the content and availability of its publications, and the processing procedures for DTC applications. Also, subject to the limits of the *Income Tax Act*, the CCRA will explore possibilities with HRDC to reduce confusion between the requirements of the DTC and CPPD programs, for example, the development of joint communications products.

With regard to tax policy, the GoC has also benefited from consultations with the community of persons with disabilities in developing changes to the eligibility criteria for the DTC. Most recently, Budget 2003 announced measures that were developed following consultations with representatives of the community of persons with disabilities and medical practitioners in December 2002 and January 2003 to respond to the implications of the March 2002 Federal Court of Appeal decision in *The Queen v. Hamilton*.

The GoC agrees that more needs to be done to ensure that the DTC effectively meets its intended purpose. The Government of Canada is conducting an evaluation of the DTC as data from the 2001 Participation and Activity Limitations Survey (PALS) become available and may identify areas for change. (PALS data is being released in successive phases between December 2002 and December 2003.)

In addition, the GoC consults on an on-going basis as it develops tax policy to ensure that tax measures continue to meet their intended purpose. This is done primarily through the pre-budget consultations of the Standing Committee on Finance, meetings between individuals or groups and the Minister of Finance and Department of Finance officials, and through submissions to the GoC.

Further, the GoC has established a technical advisory committee on tax measures for persons with disabilities. This committee will advise the Ministers of Finance and National Revenue on possible legislative and administrative changes in respect of tax measures benefiting persons with disabilities, including the DTC and the Medical expense tax credit (METC). This Committee may also, at its discretion, examine other tax issues pertinent to persons with disabilities.

These on-going consultations, in addition to the work of the technical advisory committee, provide the community of persons with disabilities with an opportunity to provide input on tax issues that concern them.

■ STREAMLINING THE APPLICATION AND ASSESSMENT PROCESS

This report has amply demonstrated the complexity of the language used to describe the programs and the process to determine and assess eligibility. In the cases where clients apply to more than one program, the basic client data may be identical and the medical information required very similar. Co-management of clients and sharing data are being explored as means of streamlining the process and improving services to clients. For example, HRDC (CSLP) has started to examine harmonization opportunities with provinces to look at the possibility of streamlining application forms and using the same medical certificate for both provincial and federal student loan programs. HRDC will undertake a systematic review of its application forms for all its disability programs to identify opportunities for simplification and harmonization.

As mentioned above, the revised DTC form developed through the CCRA consultation process with disability organizations and medical associations, should be easier to understand and fill out by both applicants and medical practitioners.

■ IMPROVING COMMUNICATIONS WITH CLIENTS AND PRODUCTS

Communication is a key priority of the ADMSC mentioned earlier. As part of its activities, the ADMSC supports work to produce more integrated and user-friendly communication and information products to help Canadians better understand disability issues, Government of Canada disability programs and policies. On behalf of ADMSC, HRDC coordinated the production of the first federal disability report which describes many of the Government of Canada programs and services supporting persons with disabilities. *Advancing the Inclusion of Persons with Disabilities* was released in December 2002. As new PALS data becomes available updates of sections of the federal disability report are being posted on the Internet. A summary document on key PALS data will be published in December 2003 and a second federal disability report will be released in December 2004. Other publications such as *Bridging the Gap*, and websites such as *Persons with Disabilities Online (www.pwd-online.ca)* also provide summary information on Government of Canada programs and services for persons with disabilities. In addition, there exists a federal, provincial and territorial website *Disability Weblinks (www.disabilityweblinks.ca)* that provides information on a variety of disability-related programs and services offered by the various jurisdictions throughout Canada. Efforts are ongoing to streamline and consolidate the various disability-related information products being produced.

The HRDC disability coherence workplan also lists a number of communication products to be developed such as a service delivery guide, and a roadmap of HRDC disability programs as tools that will be helpful for both clients and staff. More communication between HRDC regional and headquarters program and policy officers through an electronic bulletin board or regular conference calls are simple internal information mechanisms that can also help improve disability-related knowledge and ultimately, services to Canadians.

■ NEXT STEPS

This report is not an end in itself. It does not resolve the tensions mentioned earlier but provides, for the first time, a shared information base to allow GoC departments to provide a more coherent picture of its disability policies and programs and to continue a dialogue with all stakeholders. It may also be useful to the ongoing work of the technical advisory committee on tax measures.

In addition to the actions identified above, the report confirms the need for further examination of the complexities associated with disability definitions and eligibility criteria. Collaboration among and between governments will be required to explore areas where harmonized approaches can be taken to lead to greater program coherence and to improved services for Canadians with disabilities while ensuring the integrity of the individual program objectives is maintained. Moreover, further research and consultation will be required to continue to improve our understanding of the interaction between the different concepts of disability and their impact on policy and program design.

By continuing to work collaboratively, federal departments are committed to ensuring that persons with disabilities have access to comprehensive information on disability-related programs and to the supports and services they need to participate fully in Canada's society and economy.

Annex A

Disability Definitions — Selective quotes from witnesses who appeared before the Standing Committee on Human Resources Development and the Status of Persons with Disabilities and its Sub-Committee on the Status of Persons with Disabilities between 2001 and 2003.

The Standing Committee on Human Resources Development and the Status of Persons with Disabilities and its Sub-Committee on the Status of Persons with Disabilities have played an important and valuable role in providing venues for the disability community, academics, professional associations and individuals to express their issues and concerns about disability definitions in Government of Canada policy and programs. Since 2001, these committees have conducted:

- A series of round tables on:
  - Employability, skills, learning and innovation;
  - Disability supports;
  - Disability income support; and
  - Family support .
- A study of the Disability Tax Credit;
- A mandatory five-year review of *Employment Equity Act*; and
- A study of the Canada Pension Plan Disability program that consisted of parliamentary hearings and the first public e-consultations conducted by a parliamentary committee.

Key messages about disability definitions that came from these many testimonies focus on a range of issues such as:

- Shifting the definition of disability from a medical to a social model;
- Addressing the confusion among persons with disabilities and health care practitioners with the number and diversity of goc disability forms that use different eligibility criteria and assessment processes;
- Addressing the needs of persons with cyclical or episodic disabilities;
- Measuring and assessing the disabling impacts of cognitive or intellectual disabilities and of serious mental illnesses;
- Addressing systemic disincentives for persons with disabilities to return to work.

The quotes presented in this annex reflect the opinions, perceptions and perspectives of the individuals or the organizations they represented at various hearings or round tables mentioned above. Please note that the text below consists of transcripts of verbal presentations[21] that were captured electronically, it may contain errors and/or omissions. The text in brackets is ours.

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[21] The full version of these transcripts are available on the House of Commons Web site at http://www.parl.gc.ca (under Committee Business/House of Commons/List of Committees/ Standing Committee on Human Resources Development or Sub-Committee on the Status of Persons with Disabilities/Evidence and Index)

QUOTES

Ms. Nickie Cassidy, *Multiple Sclerosis Society of Canada*
(Roundtable on Disability Income Support, May 16, 2001)

> "The current qualification criteria for CPP disability benefits require that the illness be severe and prolonged. The obvious problem with these criteria is that they require the applicant's symptoms to fit into a narrowly defined box that excludes from coverage people who have substantial, recurrent impairments. MS [Multiple Sclerosis] is permanent and often severe, although the impairment it causes may not be. The often fluctuating nature of the illness precludes many individuals with MS not only from participating regularly in the workforce, but also from qualifying for disability benefits."

Mr. Laurie Beachell, *Council of Canadians with Disabilities*
(Study of the Disability Tax Credit, Nov. 20, 2001)

> "[This DTC review] gives us the opportunity to raise some long-term issues about definition and the process of identifying people. The definition, as you know, talks about limitation in activities of daily living etc., and activities of daily living are very limited. They are walking, seeing, thinking, remembering, perceiving, dressing, feeding oneself, etc. They are not going to work or school. They are not managing your house and housekeeping. Those definitions in the act…could be broadened. It is not that we just want to look at the additional costs individuals have in dressing themselves, walking, etc., it is the costs people have participating in our community and in work, costs that are not offset by other mechanisms."

Mr. Ed Pennington, *Canadian Mental Health Association*
(Study of the Disability Tax Credit, Nov. 27, 2001)

> "Since all persons with a persistent or recurrent mental illness can think, perceive, and remember, not one of them would qualify for the disability tax credit using this assessment tool [Form T2201]. Therefore the wording of the question fails to adequately measure and assess the disabling impact of this illness."

Ms. Lembi Buchanan, as an individual
(Study of the Disability Tax Credit, Nov. 27, 2001)

> "… I've done a lot of research into the definition of disability, and every province has a different definition. The Ontario government has a new definition for the Ontario disability support program, which is actually quite inclusive. It's probably the best definition that's out there at present, because it recognizes not only continuous problems, but that many of these impairments are recurrent or persistent. It allows the latitude, at least, for the physician to make the decision. As far as I understand, the

> bottom line is that there is no good definition of disability. We're able to diagnose mental illnesses, we have good diagnostic tools, but we do not have a good definition of disability. That's a huge challenge."

Dr. Henry Haddad, *Canadian Medical Association*
(Study of the Disability Tax Credit, Jan. 29, 2002)

> "... [T]he CMA recommends a standard of fairness and equity be applied across all federal disability benefit programs. One of the problems with assessing disability is that it is difficult to define in several situations. Even in the most widely used definitions, such as the WHO's, the word "disability" is defined in very general and subjective terms."
>
> "The DTC and other disability programs do not use the same criteria for defining disability. To qualify for the DTC, a disability must be prolonged, which means over a period of at least 12 months, and severe, which means that it must markedly restrict any of the basic activities of daily life that are defined. Though CPP criteria use the same words, "severe" and "prolonged", they are defined differently. Severe means it prevents applicants from working regularly at any job and prolonged means long term or may result in death. Other programs, such as VAC, have entirely different criteria. This is confusing for physicians, patients, and others involved in the application process."
>
> "The CMA would like to see some consistency in definitions across the various government programs. This does not mean that the eligibility criteria must be identical, however."

Dr. Blake Woodside, *Canadian Psychiatric Association*
(Study of the Disability Tax Credit, Jan. 29, 2002)

> "The use of primitive efforts, phrases such as "almost all of the time", "greater than 90 percent", or "prolonged", simply does not address the complex issue of characterizing psychiatric disability. This lack of clear definition is the primary reason the current system discriminates against those with mental illness."
>
> "As reported by others, psychiatrists generally find form T2201 inappropriate. In an attempt to make the form easy to complete, it is now too simplistic. Clearer definitions of psychiatric and mental health disabilities must be developed to allow practitioners to accurately describe their patients' conditions. The development of more detailed guidelines must be accompanied by an education strategy for practitioners."

Ms. Lauri Sue Robertson, *Toronto Employment Equity Practitioners Association*
(Review of the *Employment Equity Act*, Feb. 7, 2002)

> "Often they [employees filling employment equity surveys] do not understand the definition of the word disabled, and so they [may] respond incorrectly to the survey questions. To clarify the issue at hand, a disability is a limitation in function that is consistently present; a handicap is situational and depends upon a specific environment. The confusion over these definitions significantly damages the validity of employers' surveys."

Dr. Harry Beatty, *CPP Working Group of Ontario*
(Study of the Canada Pension Plan Disability Program, Feb.12, 2003)

> "We are concerned that the same definition [has been] in the legislation since the Act came in the 60's, with no change, but the interpretation seems to be moved back and forth by the department..."
>
> "... [T]here's sort of a different definition and different assessment process for every program so that people have to go back to their doctors.... I would at least like to see if they can be justified or there's a possibility of having a more, not necessarily standardized, but at least a more uniform approach in some ways..."

Ms. Elizabeth Ostiguy, *Canadian Mental Health Association*
(Study of the Canada Pension Plan Disability Program, Feb.20, 2003)

> « Depuis l'entrée en vigueur du programme, la définition de l'invalidité ne tient pas compte du fait que les déficiences sévères peuvent être chroniques et récurrentes plutôt que permanentes. Depuis 35 ans, les clients des services de la santé mentale ont dû surmonter une foule d'obstacles pour avoir droit aux prestations d'invalidité du RPC en raison de la nature cyclique, épisodique et imprévisible de leur maladie. »
>
> « Nombreux sont les médecins qui refusent de remplir les formulaires et encore plus nombreux ceux qui ne connaissent pas bien la définition d'invalidité utilisée dans le programme de prestation d'invalidité du RPC. Au moindre doute, la demande est rejetée. Compte tenu de cette définition, le psychiatre doit savoir que pour assurer l'admissibilité de son patient, il doit établir le prognostic le plus prudent possible. »

Dr. Dana Hanson, *Canadian Medical Association*
(Study of the Canada Pension Plan Disability Program, March 18, 2003)

> "Increasingly, physicians are spending more and more of their time filling out forms. Forms for federal health programs such as the CPP, for private health insurance claims, pension benefits, tax credit eligibility, pharmaceutical plans and workers compensation, to name just a few. To figure out all the various forms and determine eligibility you almost need to be a physician, a lawyer and tax expert."

> "[T]here is virtually a different definition and a different assessment process for each and every program. A common frustration for physicians is that while a patient qualifies as disabled under one disability program, that same patient does not under another…"
>
> "… There needs to be some consistency and definitions across the various government programs. Let me state very clearly though that this does not mean that eligibility criteria must be identical. However, there must be a way for a more standardized approach."

"…That a comprehensive information package be developed for health care providers and the public that provides a description of each program, its eligibility criteria, the full range of benefits available, copies of sample forms, physical assessment and form completion payment information, et cetera. "

Annex B

Disability Definitions in the Provinces and Territories — Extract from a Report Prepared for the Office for Disability Issues, Human Resources Development Canada by Harry Beatty, August 2003

DEFINITIONS OF DISABILITY IN THE PROVINCES AND TERRITORIES

1. In this preliminary study, information is provided on the definitions of disability in use in the ten provincial and three territorial jurisdictions in Canada. The definitions considered are in five categories:

   A. Disability Policy Definitions of Disability;
   B. Human Rights Definitions of Disability;
   C. Income Programs Definitions of Disability;
   D. Employment Supports Programs Definitions of Disability;
   E. Special Education Definitions of Disability.

   These five categories were chosen because of their fundamental importance in governmental disability policy and programs, and because each category illustrates a somewhat different kind of challenging definitional issue. In each category, jurisdictions have an opportunity to develop a definitional approach which reflects an understanding of disability issues.

2. In each category and for each jurisdiction, a definition of disability or related content has been included and considered, whether or not there is an explicit definition of "disability" or a related term. Sometimes a definition is being developed or changed by a jurisdiction. Sometimes there are policy statements which, although not in the form of a definition, have the same effect as a definition. And, sometimes jurisdictions have made a policy decision not to develop a definition of disability in one (or more) of the categories. Finally, sometimes jurisdictions have not yet addressed the definitional challenges with respect to a given category, or have not made information about the definitions they use readily available (e.g. on their web sites).

3. An in-depth consideration of how disability is defined in each category by a jurisdiction, and how the definition is applied on a day-to-day basis in practice, is beyond the scope of this preliminary study. A full analysis for a particular jurisdiction would involve looking at the definition, or related content, in the context of legislation, all related policies, and the realities of how policies, programs and services are implemented. In this study, we consider definitional issues in a much more general way, to illustrate some of the key conceptual issues involved. Basically, we are looking at how differing approaches to definition may reflect different understandings

of disability, and may lead to different policy directions. However, the realities of day-to-day administration may also lead to similarities in actual practices between jurisdictions which have very different definitional approaches "on paper", or to significant differences between jurisdictions which have very similar definitional approaches.

4. This preliminary study is accordingly not an evaluation of the definitional approaches in the jurisdictions considered. It does, however, illustrate in hopefully an interesting way some key emerging issues related to the understanding of disability. At the outset, it may be helpful to raise for discussion the question of whether a more formal or detailed definition of disability with respect to a particular category is always necessary, or even advantageous. In the concluding section of this paper, this question is considered in more detail.

A. POLICY DEFINITIONS OF DISABILITY

1. The first category is described as "policy definitions" for purposes of this study. They come from a range of sources:

   - Mandate of a Premier's Council or Office for disability issues; (Alberta, New Brunswick, Nova Scotia);
   - Disability Lens (British Columbia);
   - Provincial/territorial disability strategy document (Manitoba, Northwest Territories, Saskatchewan);
   - Provincial program/study of disability supports (Newfoundland and Labrador, Prince Edward Island);
   - Territorial Departmental mandate (Nunavut, Yukon);
   - General accessibility/services legislation (Ontario, Québec)

   These are somewhat diverse contexts, but there is also a commonality—the general conceptualization of disability for policy purposes.

2. A number of jurisdictions (Alberta, British Columbia, New Brunswick, Northwest Territories, Québec) refer in their general policy definitions of disability to the International Classification of Impairments, Disabilities and Handicaps (ICIDH) developed by the WHO. Interestingly, none of these jurisdictions has made specific reference to the recent adoption of ICIDH-2, more currently known as ICF (International Classification of Functioning, Disability and Health), which has changed in important respects from the initial 1980 WHO document. ICF reflects a new approach based on a "conditions of health" rather than a "consequences of illness" model, and there is more emphasis on environmental factors. The former terminology of "impairment", "disability" and "handicap" is replaced in ICF by "body functions and structures" and "activities and participation". For more detail, consult the WHO ICF web page: http://www3.who.int/icf/

3. The environmental, social and cultural aspects of disability definitions tend to be emphasized in documents of a broad policy nature from jurisdictions (British

Columbia, Manitoba, Northwest Territories, Saskatchewan, Yukon). Where documents deal more directly with programs, rights and entitlements (Newfoundland and Labrador, Ontario, Prince Edward Island, Québec), the definitional approaches place much more emphasis on medical diagnosis and classification, and on specific types of individual limitations.

4. The Newfoundland and Labrador's "Study of Supports to Persons with Disabilities" (2000) is interesting because of the attempt to compare governmental and consumer approaches to disability definition. The Study found variations in approaches in both sectors. The principal concern of consumers in particular was found to be the use of definitions of disability in enabling or restricting access to services and supports, rather than the specific language chosen. The final report can be consulted at: http://www.gov.nf.ca/hre/publications/pdf/disabsup.pdf
5. Nova Scotia has established a Disabled Persons' Commission through legislation, but did not find it necessary to define "disabled" in the governing statute.
6. Nunavut explicitly places disability as a cultural issue within the broad mandate of its Department of Culture, Language, Elders, and Youth.
7. Ontario has adopted the *Ontarians with Disabilities Act*. As this legislation is primarily focused on accessibility issues, the same definition of "disability" is used as in the Province's Human Rights Code.
8. In Québec, L'Office des personnes handicapées is being given a specific mandate to develop a uniform classification of disability for use throughout the Province, based on the ICIDH.

B. HUMAN RIGHTS DEFINITIONS OF DISABILITY

1. All provincial and territorial jurisdictions provide human rights protection against discrimination to persons with a wide range of physical and mental disabilities. Each jurisdiction has a definition that is generally inclusive of major disability groups.
2. There are nevertheless significant differences in how jurisdictions define disability or handicap in their human rights legislation. These differences would potentially be most important in contentious cases regarding the definition of disability, such as cases involving obesity, addiction, environmental sensitivity, or asymptomatic HIV infection.
3. There has been a general convergence of human rights law with the law developed under the *Canadian Charter of Rights and Freedoms*. This convergence would lead courts and tribunals to develop a common approach to key concepts such as disability.
4. A minority of jurisdictions leave disability or handicap undefined in human rights legislation. (This is consistent with the approach taken in the Charter, which does not

contain a definition of "physical disability" or "mental disability".) However, these jurisdictions generally adopt an expanded definition as part of their human rights policy, so in practice their approach is not too different from jurisdictions with more detailed definitions.

5. Most jurisdictions list a number of disabilities as specifically included in their definition, but all jurisdictions which do this treat the list for clarification purposes only. No jurisdiction attempts to give an exhaustive list of disabilities. Use of assistive devices or a service animal is specifically included in the definition of disability in several jurisdictions.

6. Some jurisdictions require physical disabilities to have been caused by bodily injury, birth defect, or illness, while others do not have such a causal requirement. In jurisdictions with a causal test for physical disabilities, it would be more difficult to establish obesity, for example, as a disability.

7. Some jurisdictions specifically include perceived disabilities in their definitions, while others do not. In jurisdictions without a specific inclusion of perceived disabilities, it would be more difficult to establish asymptomatic HIV infection as a disability, even if an individual had been treated prejudicially on that basis.

8. Some jurisdictions specifically include drug or alcohol dependence as disabilities, while others do not.

9. Because of the inclusive and general nature of the human rights definitions of disability in the various jurisdictions, it is very difficult to determine whether the differences in wording reflect differences in legislative intent, or are just stylistic in nature. It is not possible to state with any certainty whether or not there are real differences among jurisdictions as to who is considered to be "disabled" for human rights purposes.

C. INCOME ASSISTANCE DEFINITIONS OF DISABILITY

1. The definitions in this section all relate to social assistance programs. These are the programs in each jurisdiction which are of importance to the greatest number of persons with long-term disabilities. Other disability assistance program such as workers' compensation and motor vehicle accident benefits are also of great significance to those who are disabled because of accidents or occupational illness, but the focus of the definitions of disability in these programs is on the specific disability caused by the accident or illness, not on all aspects of the person's disability.

2. Alberta, British Columbia and Ontario have developed separate social assistance legislation for persons with disabilities, while the other 10 jurisdictions include persons with disabilities in more general social assistance programs. However, all jurisdictions attach higher rates, additional health benefits, and/or higher asset and income exemptions to eligibility as a person with a disability. As well, the

requirement to seek competitive employment is removed, or at least considerably lessened, for social assistance recipients with a disability in all jurisdictions. Accordingly, in every jurisdiction the definition of disability is extremely important to economically disadvantaged residents.

3. It is not easy to classify the income assistance definitions of disability in the 13 jurisdictions by components that are, or are not, present. This is because one element in a definition often modifies the interpretation of another. Accordingly, general similarities and differences among the definitions area discussed in this section without referring to the specific language used in a particular jurisdiction. Examples from jurisdictions are chosen for purposes of illustration.

4. Some jurisdictions have very detailed statutory definitions (British Columbia, Ontario) while others leave "disability" undefined in legislation (Nova Scotia, Saskatchewan). It is not clear, however, how much difference this makes in the actual disability determination process, because a jurisdiction lacking a formal statutory or regulatory definition may nevertheless have a detailed "working" definition, either explicitly or implicitly in policy and program documents.

5. Most jurisdictions make reference to the duration of the disability, using tests which vary from "90 days" (Manitoba) or "one year" (Ontario) up to "permanent" (Alberta, Yukon).

6. British Columbia makes specific reference to including disabilities which occur "periodically for extended periods", and Ontario to disabilities which are "recurrent".

7. Every jurisdiction requires certification of the disability by a physician (or another category of designated health professional, and this is referred to in the definition in many jurisdictions. However, Ontario and Saskatchewan automatically accept eligibility for CPP Disability as proof of disabled status, and do not require additional medical proof.

8. Some jurisdictions define a test for disability using primarily an unemployability approach ("unable to provide for himself or herself", or similar language). These jurisdictions include Alberta, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, and Yukon. Other jurisdictions define disability using primarily a "restrictions in the activities of daily living" approach. Here we can include British Columbia and New Brunswick. A third group of jurisdictions, including Manitoba, Nova Scotia, Ontario, and Saskatchewan, combine the two approaches in some way.

9. Some jurisdictions use qualifiers such as "severe" (Alberta, Québec), "significantly" (British Columbia), or "substantial" (Ontario) to qualify key terms in their definitions. It is unclear what difference the choice of these terms makes in the day-to-day disability determination process in the respective jurisdictions.

10. Alberta refers in its definition to the possibility of remediation of the disability through therapy or treatment.

11. British Columbia, Manitoba and Newfoundland and Labrador refer in their definitions to a person's requirements for care or supervision as eligibility criteria.

12. British Columbia refers in its definition to the use of assistive devices and of an assistance animal as eligibility criteria, indicative of a restricted ability to perform the activities of daily living.

13. New Brunswick has separate definitions of "blind" and of "deaf" in its legislation.

14. The Northwest Territories and Ontario have specific provisions or interpretations relating to the eligibility of persons with substance addiction.

15. Québec includes a reference to the individual's "socio-economic profile" in its definition.

D. EMPLOYMENT SUPPORTS DEFINITIONS OF DISABILITY

1. The employment supports definitions of disability considered in this section, are, by and large, simpler and more similar to each other than the income assistance definitions above. Most of the definitions basically require a candidate for employment supports to have a long-term disability which creates a barrier to equal participation in the labour market. Most as well either state or imply that the candidate must have reasonable potential to participate in the competitive labour market, if employment supports are provided. Some medical certification may be required, but there are not the detailed requirements we saw in the previous section.

2. One significant reason for the greater standardization and resulting simplicity is the Canada-Provincial/Territorial Employability Assistance for People with Disabilities (EAPD) initiative, which came into effect in 1998 to replace the Vocational Rehabilitation of Disabled Persons (VRDP) program with a stronger focus on employment. Through bilateral agreements with all provinces, the Government of Canada contributes funding to provincial employment support programs and services, subject to certain conditions. It is worth noting that Québec is in the process of changing its definition to one more like that used in the other provinces. There are currently no EAPD bilateral agreements with the territories. For further information on EAPD, see the Human Resources Development Canada web page on this initiative: http://www.hrdc-drhc.gc.ca/hrib/sdd-dds/odi/content/eapd.shtml

3. Prince Edward Island has recently developed a new Disability Supports Program, in which eligibility for employment supports is combined with eligibility for other disability-related items and services, such as assistive devices and respite care. Some question whether too many definitional restrictions have been placed on eligibility for employment supports.

E. EDUCATION DEFINITIONS OF DISABILITY

1. The education definitions of disability considered in this section relate to students at the Kindergarden to grade 12.

2. There is a typical pattern which jurisdictions employ in defining disability within the education system. It starts with a very wide legislative definition, encompassing almost any student with a special need. Then, however, except in jurisdictions with small populations, the department responsible for education has developed a very detailed policy which classifies students with disabilities into sub-categories.

3. There is an interesting contrast in this respect between the information provided for Québec and for Prince Edward Island. The Québec Plan of Action "Adapting Our Schools to the Needs of all Students" responds to a report indicating that fewer categories and definitions would help reduce the administrative burden in that system, and allow greater individualization of appropriate supports. Details of the Plan of Action can be found at the Government of Quebec, Ministry of Education (1999): http://www.meq.gouv.qc.ca/dassc/pdf/planade00.pdf.

4. The Prince Edward Island Mackie report, "Review of Special Education", on the other hand raises the issue of whether more legislative provisions and safeguards are needed in that system. This may indicate that both jurisdictions have identified a need to work towards balancing a system based on classification with the flexibility to assist individual students without too much reliance on "labels". The Mackie Report can be consulted at: http://www.edu.pe.ca/publications/reports/se/toc.asp

5. The Pathways program in Newfoundland and Labrador seems to move away from definition and classification of children with special needs to a system of definition and classification of the educational needs which each child has. All jurisdictions have moved in this direction with their emphasis on Individual Education Plans.

SOME TENTATIVE CONCLUSIONS

1. There are significant differences in purpose and intent among the definitions in the five categories we have considered. These may make it impossible to pursue the goal of a single definition of disability "for all purposes", and difficult even to pursue the more limited goal of a common framework.

2. In every jurisdiction, the definitions used for general policy discussions and in human rights legislation are broader and more inclusive than the definitions used for entitlement to benefits, especially social assistance support. The reason for this is evident. General disability policy discussions should include everyone with a disability, regardless of degree or type of limitation. Similarly, everyone with any degree or type of disability should be able to claim human rights protection, if they are denied a right or benefit because of prejudice. But not everyone can reasonably

claim entitlement to disability-related social assistance. Their disability must arguably lead to a significant limitation in some aspect of their lives before such a claim is justified.

3. Definitions of disability, and approaches to understanding disability, vary among jurisdictions, but the clearest differences of the five areas we studied were in the social assistance area. There is a fundamental issue over whether to base social assistance eligibility on unemployability, which may lead to a work barrier, or on restrictions in activities of daily living, which may affect the ability of persons with disabilities to support themselves by working.

4. There is also a difficult tension in choosing definitions in education. A more detailed classification and definitional system may assist students, parents and teachers in understanding specific disabilities. It may also assist schools, school boards and departments of Education in developing sound policies and in allocating resources fairly. On the other hand, with detailed classification and definition comes paperwork, bureaucracy and "labeling" which may limit individually appropriate choices for students.

Annex C

DISABILITY DEFINITIONS IN SELECTED INTERNATIONAL JURISDICTIONS

Summary: The following describes two recent major European studies. The Council of Europe study on disability definitions found that there were four basic approaches to the definition and assessment of disability in member states: barema methods (impairment tables), care needs assessment, functional capacity determination and economic loss estimation. Multidisciplinary teams determine the allocation of allowances and personal assistance as well as evaluate the person's potential for professional and social re-habilitation and re-integration in the community and the economy. The study highlights the need for more research, cross-border communication and further harmonization of disability assessment methods in Europe in order to move towards greater homogeneity of systems and calls for a coherent policy for persons with disabilities in Europe.

In the European Commission study, the definitions of disability used for the benefits in Europe are based on lack or loss of work capacity or earning capacity, similar to the system in Canada. The Commission specifically mentioned that "its goal in commissioning the research was not to move towards a single standard definition, but rather to develop a framework in which different definitions could be located and compared." Program coherence and opportunities for information sharing were the main drivers of this study.

In many European countries, there are general prohibitions on discrimination (in national constitutions, for example) where disability is mentioned but not defined. Some states use broad definitions covering minor disabilities, while others use detailed definitions that limit coverage to people with substantial disabilities.

A GROWING INTERNATIONAL INTEREST IN THE DEFINITION OF DISABILITY

In the last three years, a number of important comparative international studies attempted to address the issues raised by the definitions of disability used in different disability-specific programs. There is an increasing awareness of the fact that the definition determines how social policy and programs are designed, and the type of support persons with disabilities could receive.

The first serious attempt to clarify the concept of disability is the colossal review of the 1980 International Classification of Impairments, Disabilities and Handicaps (ICIDH) by a large international and multidisciplinary team of researchers, disability experts, program administrators and specialists as well as representatives of the disability community. This work resulted in the adoption of the new International Classification of Functioning and Disability (ICF) by the WHO in May 2001 described in Part 1 of this report. The ICIDH defines disability as a result of impairment, whereas the concept of "handicap" refers to socio-economic and legal disadvantages experienced by persons with disabilities when their specific needs are not taken into consideration.

Although many governmental institutions around the world adopted and applied the principles of ICIDH, a number of disability organizations, advocacy groups and academics were critical of this definition for it draws a direct causal link between impairment and disability. The disability community sees disability as a social construct and therefore a social issue, which calls for changes to the social and physical environments.

The ICF was developed with the participation of the disability community and researchers with disabilities, and has therefore integrated the notion of disability as a multidimensional reality, which results from the interaction of impairment and environmental factors as barriers or facilitators. As explained in a recent European study [22], the fact that the ICF does not require "a definition of who counts as disabled and who does not", no thresholds of disability are required and therefore intra-national, international and across-fields comparisons of disability statistics and information become easier.

In 2002, the OECD distributed a draft version of its comparative study of policies to promote work and income security for persons with disabilities in 20 countries, entitled *Transforming Disability into Ability*. In explaining the methods used to identify work-age population with disabilities, the study explained that reliance on surveys based on self-reported disabilities was the only option available for comparative purposes in the absence of a "universal concept and definition of disability". As a result of possible discrepancies between the ways disability programs define disability and how people identify their own disabilities, the study shows, for example, that although the number of beneficiaries is high, "at the same time, many people who subjectively classify themselves as disabled do not receive disability benefits."[23]

In 2002, two other major studies focused on the definition of disability in the European context. The first study *Assessing disability in Europe - Similarities and differences* is the result of a three-year research project (1997-2000) financed by the Council of Europe.[24] It is a comparative analysis of disability assessment methods used to establish eligibility criteria for benefits for people with disabilities in twenty-two Council of Europe member states. It found that there were four basic approaches to the assessment of disability: barema methods, care needs assessment, functional capacity determination and economic loss estimation. The report also describes the role of multidisciplinary teams in determining the allocation of allowances and personal assistance and, more particularly, in evaluating the person's potential for professional and social (re)habilitation and (re)integration in the community and the economy. The study highlights the need for more research, cross-border communication and further harmonization of disability assessment methods in Europe in order to move towards greater homogeneity of systems and calls for a coherent policy for persons with disabilities in Europe.

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[22] The European Commission *The Definition of Disability in Europe: A Comparative Analysis*. Final Report (3 September 2002). A Project Funded by the European Commission, Employment and Social Affairs Directorate-General. Brunel University, UK. P.17

[23] OECED (2003). *Transforming Disability into Ability*. P. 58.

[24] Dal Pozzo, H. Haines, Y. Laroche, F. Fratello, C. Scorretti (2002). Assessing disability in Europe - Similarities and differences.

The second study, entitled *Definitions of Disability in Europe: A Comparative Analysis, is* the result of a two-year research project that was published in September 2002 under the auspices of the European Commission. The Commission's interest in the definition of disability stems from, among other things, "the regulations governing the cross-border claiming of social security benefits and access to welfare services" and regulations governing public procurement and state aids in the area of subsidies and restrictions on competition relating to the operations of sheltered workshops. The Commission is also interested in the creation of common space where common methods of collecting and analyzing data related to disability can be established to share information:

> The Commission specifically mentioned that its goal in commissioning the research was not to move towards a single standard definition, but rather to develop a framework in which different definitions could be located and compared[25].

The study adopted a framework for comparison that is "relevant and meaningful in describing the disability policies of the member states" (Ibid.). It discusses the definition of disability in the four following areas: 1) assistance with activities of daily living (ADLs), 2) income replacement, and 3) employment provisions, and 4) antidiscrimination legislation. A similar approach was adopted in this discussion paper on definitional issues: *Defining Disability—A Complex Issue.*

The following provides an analytical summary of the findings of the study by the European Commission and a discussion of some definitional issues arising within disability support programs in the United States and Australia.

1. ASSISTANCE WITH ACTIVITIES OF DAILY LIVING (ADLS)

Given the nature of needs requiring assistance with ADLs (e.g., eating, moving and personal hygiene, home help, disability or health-related extraordinary expenses), most member states of the EU define disability in this area in terms of the needs to be met. For example, under the *Austrian Federal Allowance Act* (1993) eligibility for assistance is determined on the basis of "permanent need for support and care as a consequence of a physical, mental, emotional or sensory disability that is expected to last for at least six months." Under the Constant Attendance Allowance in Ireland, to qualify for assistance with ADLs, an applicant must be disabled to the extent that she or he requires "full-time care and attention". In Italy, the accompanying grant which was legislated in 1980, provides assistance to a person who must be classified as having a 100 percent invalidity and must be unable to walk or undertake any ADLs without the aid of a companion. In the UK, the Disability Living Allowance targets people "who have difficulties getting around" and those with "care and supervision needs". In Belgium, the Flemish Fund for the Social Integration of Persons with a Disability defines disability as a person's limitation in the ability to live independently.

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[25] Ibid. pp. 7-9

Many countries specify certain types of impairments that qualify for assistance with ADLs, namely blindness and deafness (e.g., Austria, Denmark, France, Italy, UK, and Ireland), HIV (Portugal), intellectual impairments and mental dysfunction (Sweden), speech impediments and difficulties using public transportations (Finland). Other countries such as Belgium, Germany and Netherlands do not specify any impairment for assistance purposes.

In Australia, two different Commonwealth (federal) programs provide assistance with ADLs to children and adults (16 years and older) with disabilities through payment to a third party. The Carer Payment (CP) is a support payment to those who provide constant care to adults (16 years and older) with a severe physical, intellectual or psychiatric disability. The Carer Allowance is paid to people who provide home care to a child, senior, or adult with a severe disability, a chronic medical condition, or frail health.

Although in the area of assistance with ADLs there seems to be clear connections between health status and disability-related needs, the study by the European Commission argues that "the structure of entitlement" in the States of the EU does not follow this natural pattern:

> In a number of states, assistance with ADLs is only available to recipients of disability income maintenance benefits (in several states, the most extensive ADL assistance is confined to recipients of industrial injury and occupational disease benefits). To qualify for ADL assistance, recipients have to pass two types of test in sequence: first a test of inability to work and then a test of limitations in performing ADLs. [26]

The study argues that this double testing might be based on the assumption that work-related activities are more demanding than the basic activities of daily life, and consequently, restrictions in performing the latter translates into more difficulties doing the former. However, "work may involve abilities to perform highly specific activities which are compatible with inabilities in some basic ADLs." [27]

Another issue relates to the use of different activities that qualify as ADLs. While in many states ADLs mean the ability to sit, lie down and get out of bed, others include incapacity to maintain personal hygiene and to dress and eat, some include "mobility and transportation-related activities and 'social' activities (e.g., housework and household management, communication and aspects of social participation). The Disability Tax Credit in Canada excludes housekeeping and work from "activities of daily living", and any functional limitations that could be overcome by the use of medication or therapy.

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[26] Ibid. p. 26

[27] Ibid. p. 26

2. INCOME MAINTENANCE AND INCOME SUPPORT

All member states of the European Union and Norway, as well as United States and Australia provide cash benefits for people who are unable to work due to disability. Like Canada, many states have two benefits: 1) contributory insurance benefits which provides a flat-rate or earnings-related benefit, and 2) non-contributory benefits which provides basic income support, which may or may not be means-tested.

For example, in Australia, "Disability Support Pension (DSP) is paid to people who are unable to work for at least 30 hours per week, or be re-skilled for such work, for more than two years because of a disability."[28] DSP is intended to ensure that people with disabilities have adequate levels of income and maximum opportunities for social participation. To qualify for DSP a person must:

- be over 16 and be under Pension age (currently 62 for women and 65 for men); and
- be permanently blind; or
- have a physical, intellectual or psychiatric impairment (assessed at 20 points or more under the Impairment Tables); and be unable to do any work, or be re-skilled for any work, for a period of at least two years; and
- become unable to work while in Australia, or have 10 years qualifying Australian residence.

In the United States, persons with disabilities may receive income support from two programs: the Social Security disability insurance program and the Supplemental Security Income (SSI) program.

Under Social Security, disability is defined on the basis of work incapacity. A person is considered disabled if she or he can no longer perform the tasks of a previous job or adjust to another job for medical reasons. As under CPP Disability, the disability under the US Social Security program must be expected to last at least a year or to result in death.[29] If a person is working and is earning an average of more than $800 a month, the person cannot be considered disabled.

In most member states of the EU, work incapacity is the first criterion for establishing eligibility for income replacement benefits. Some states, including the Netherlands, Sweden and Germany have adopted the concept of "partial disability", in recognition of regular part-time work. However, as the study of the European Commission[30] argues,

> [I]n practice, few recipients of partial benefits do in fact work, so the system operates more as a way of awarding lower benefits to less severely disabled people (if household income is sufficiently low as a result, benefits may be supplemented with social assistance).

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[28] http://www.facs.gov.au/disability/ood/dspc/overview.htm

[29] Social Security on Line (2003): at: http://www.ssa.gov/pubs/10029.html

[30] Ibid.p.27

Similar to the Canadian context, the definitions of disability used for the benefits in Europe are based on lack or loss of work capacity or earning capacity:

> The appropriateness of these definitions depends on whether plausible connections can be made between work capacity and health status. Since claimants are usually not working, the central issue for assessors is to establish whether the applicant's non-employment is because of the state of his or her health or for some other reason (general labour market conditions, low skills, lack of motivation, etc).[31]

The study shows that disability defined on the basis of work incapacity can be assessed in different ways: through a "procedural approach", probing the reasons a person stopped being part of the labour force; or through a "worker's capacity profile" where the focus is on the cause of work incapacity. The method consists of comparing an applicant's capacity profile with a job requirement. A third approach evaluates disability without explicit reference either to past or potential work, focusing instead on the extent to which a person's functioning is impaired.

Programs concerned with the reintegration of applicants in the labour force tend to evaluate the work inability in which options for medical and/or vocational rehabilitation, and other return to work opportunities are explored.

An example of an explicitly procedural approach is the Swedish 'step-by-step' process. In this process, the potential for resumption of the previous job, with or without rehabilitation, is explored first, followed by consideration of other possible jobs with the same employer, and then of other job options with or without rehabilitation. Other states are not so explicit, but an implicit process may be created, for example by rules requiring the administration to consider 'rehabilitation before pension' as in Germany.

Under the "capacity profile" approaches, some states evaluated disability by taking a 'snapshot' of a person's work capacity at a specified point, for example after the designated sickness benefit period ends. In the UK, the Netherlands and Ireland, assessment tools (e.g., the UK "Personal Capability Assessment" (PCA) and the Irish Medical Review and Assessment) are used to determine "the threshold for work incapacity". In the Netherlands, physicians use a standardized approach for measuring a claimant's functional ability to perform work. The approach defines 28 different types of action required in different occupations, including the basic activities in the PCA but also more specialized work-related activities such as tolerance of environmental conditions (reactions to heat, dryness etc), tolerance of vibration, ability to use special tools on the body (e.g. masks), etc.

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[31] ibid p.27

The Impairment-based approaches for disability assessment are impairment tables or baremas.[32] They include ratings for the damage from disease and internal injuries, sometimes measured using innovative medical technologies. The tables are divided into chapters based on physical or mental components of the body or body systems and contain guides to medical benchmarks of normal condition.

3. EMPLOYMENT PROVISIONS

The EU study also describes how definitions are used in employment provisions:

> While rehabilitation may be naturally linked to disability, many provisions for training are of potential value to a wider range of people who face obstacles entering employment which may or may not be related to a health limitation. For example, the Employment Service (ES) may provide living allowances for people undertaking training, and these may be paid for a longer duration for those designated as 'disabled' than for others. Subsidies may be paid to employers who take on different categories of workers who face obstacles entering employment; these may be paid at different rates or durations for different categories (e.g. one rate for the long-term unemployed and another for the disabled).[33]

The definition of disability under employment provisions is often qualified by non-disability-related terms such as people who are "hard-to-place", the equivalent of the British Columbia newly established category of Persons with Multiple Barriers to Employment (PPMB). The Labour Market Service Act in Austria and the Law on Employment Services in Finland provide services targeting this category of individuals with disabilities.

In the Belgian CAO-26 scheme (a collective wage agreement scheme), a labour inspector reviews the person's performance on the job and may conclude that the person's productivity is insufficiently impaired to qualify for a subsidy even if there has been a general assessment of disability. By contrast, the Flemish VIP scheme provides a subsidy which depends on the person's general disability classification. This is also the approach used in France, where subsidies for employees depend on a general classification (A, B or C) rather than on an inspection of the person's performance on the job.

In many European states, a system of quota was established as an employment strategy for persons with disabilities. Employers are obliged by law to hire and retain a given proportion of employees with disabilities or pay a fine. In Germany, Austria and Spain, the definition of disability for the purposes of the quota is based on impairment. The German and Austrian impairment rubrics are based on 'direct measurement', whereas the Spanish VM contains analysis of 'disabling effects'. This quota system contrasts with the Canadian employment equity programs which rely initially on self-reported disabilities in addition to placing the focus on a worker's capacity to do the job. Ability rather than inability is the central attribute under the Canadian *Employment Equity Act.*

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[32] Such tools are similar to the Chart developed by the American Medical Association and the ones that workers' compensation boards across Canada use to assess work incapacity and determine rates of compensation.

[33] Ibid. p. 39

Several states have reformed their quota systems. For example, France and Germany have introduced policies encouraging a more pro-active approach to the placement of workers with disabilities. In Italy, more effort is now invested in developing a detailed profile of the applicant and improving the match between potential employees with disabilities and the jobs that become available.

4. HUMAN RIGHTS LEGISLATION

In November 2000 the European Union (EU) issued a Directive (Council Directive 2000/78/EC) which established a general framework for equal treatment in employment and occupation and outlawed discrimination based on religion, belief, disability, age and sexual orientation (the 'framework equal treatment directive', FETD). The FETD does not contain a definition of disability. There are examples in the member states of general prohibitions on discrimination (in national constitutions, for example) where disability is mentioned but not defined. Other states use broad definitions covering minor disabilities (e.g., Northern Ireland), yet others, such as UK use detailed definitions that limit coverage to people with substantial disabilities.

DISABILITY DEFINITIONS IN SELECTED EU COUNTRIES [34]

Ireland

In Ireland the Employment Equality Act (1998) prohibits discrimination in employment and in other spheres of life on a number of grounds, including disability. Section 2 of the Act, states that disability means:

a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body;
b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness;
c) the malfunction, malformation or disfigurement of a part of a person's body;
d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgment which results in disturbed behaviour; and shall be taken to include a disability which presently exists, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person.

The Irish definition encompasses minor and perceived impairments, and does not require that a person's limitations be substantial.

The original Employment Equality Bill (1996) was declared unconstitutional by the Supreme Court (Judgment 118/97, 15 May 1997). It found that the requirement to accommodate disabled workers unless this caused the employer 'undue hardship' did not strike an appropriate balance between the employer's constitutional right to property and the principles of social justice which could regulate that right. The Court accepted that society should ensure the provision of accommodation for disabled people however, it argued that to place the cost of accommodation on individual employers was not appropriate: the cost of the social obligation to accommodate should be distributed across society. The Act as passed in 1998 incorporated amendments reflecting the Supreme Court's decision, and requires employers to accommodate only if the cost is 'nominal'.

The United Kingdom

The UK Disability Discrimination Act 1995 (DDA) defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities'. There has been considerable debate about the definition and there is some case law on the subject, although the definition has not assumed the central place in DDA litigation that it has acquired under the Americans with Disabilities Act (ADA). (Baker, 2002)

The requirement that a person be 'substantially' adversely affected points towards a 'protected group' philosophy and could be consistent with an element of redistribution and positive action in favour of disabled people. The Act envisages that those included in the protected group have special rights to accommodation. The cost of accommodation must be reasonable, but need not be merely nominal.

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[34] Source: European Commission, 2002), Australia and USA.

Sweden

Sweden passed an Act Prohibiting Discrimination in Working Life against Persons with Disabilities in 1999 (SFS 1999: 132). Disability is understood as 'enduring physical, mental or learning limitations of a person's functional capacities that have occurred at birth or later or can be expected to occur as a consequence of injury or disease'. A person's limitations do not have to be substantial.

By contrast with the UK, the Swedish law does not attempt to circumscribe the definition of the 'protected group', but, by contrast with Ireland, the employer can be required to provide support and adaptation measures which cost more than a nominal amount. Instead, the cost must be such that the employer can 'reasonably be required' to implement the measures (s.6).

Norway

In Norway, there is no specific anti-discrimination act relating to disability, but the Work Environment Act (WEA) contains a number of relevant provisions. As with the Swedish WEA, the Norwegian Act creates duties on employers to provide employees with scope for personal and vocational development and self-determination, as well as creating a safe environment at work. The guidance to the Act suggests that the general regulations regarding the design of the working environment are of particular benefit to disabled people.

The WEA includes some provisions specifically for disabled people. Section 13(1) requires that the employer set up the workplace in a way which permits access to disabled people, as far as this is possible and reasonable. This duty applies whether or not the enterprise currently has disabled employees, so it is not oriented towards the needs of a particular disabled individual.

The definition of disability is a broad one. The guidance to the Act emphasizes that 'employees have individual abilities and highly different capacity for work. Many have particular problems in relation to work. These may be related to various factors such as somatic or mental illness, injury, defect, the effects of drudgery or aging, etc.' The guidance does not attempt to distinguish between problems which have their origin in recognized medical conditions and those which are the result of social and complex factors. The philosophy behind section 13(2) seems very similar to the Swedish approach based on general rights accorded to all workers.

France

France passed a general law prohibiting discrimination on the grounds of health or disability in 1990. Its stems from an outcry over discrimination against people with AIDS, but its scope is wider. The law made a succession of amendments to the Penal and Labour Codes, adding the words 'health or disability' to existing prohibitions on discrimination on grounds of race, nationality, religion, morals or marital status. Disability is not defined in the law, but the use of the expression 'health or disability', and the history relating to HIV, suggests that any medical condition or impairment may be covered, whether or not it has a substantial effect on a person's activities. The scope of the 1990 law was recently extended by Law No 2001-1066 in 2001. This law amended the Labour Code to include a wider range of discriminatory grounds, as well as making a number of other amendments regarding scope and remedies. Disability and health are now covered, along with physical appearance.

Germany[35]

Article 3, Paragraph 3 of the Basic Law (Grundgesetz) of Germany's 1949 Constitution stipulates that "no one may be disadvantaged because of his handicap". This human right applies to both, the federal level and the regional (Länder) level and is to be exercised in all other institutions and organizations that have public authority.

Adopted in July 2001, Book IX of the Social Code (Sozialgesetzbuch) entitled 'Rehabilitation and Participation of disabled people' is the main legislative concerning persons with disabilities in Germany. This legislation integrates and replaces the former Rehabilitation Adjustment Act and the Severely Disabled Persons Act. From the Rehabilitation Adjustment Act, the new legislation integrates the Statutory Pension Insurance Funds, the Statutory Health Insurance Funds, the Statutory Accident Insurance Funds, the Long-Term Care Insurance Funds, the Social Compensation Funds and the Federal Employment Service. From the Severely Disabled Persons Act, the new Social Code integrates the various rights specific to persons with severe disabilities, such as right of legal protection in case of unlawful dismissal and employers' obligations to employ severely disabled persons. This integration was part of constitutional reforms and a demonstrated need for coherent legislation and coordinated service provisions for persons with disabilities.

Book IX aims at improving the participation and independence of persons with disabilities, increasing accountability for the various service providers and establishing a common legal framework and basic rights within disability-related programs and policies.

Paragraph 2 of Book IX of the Social Code introduces a three-tiered definition of disability that is based on the WHO definition of disability. This definition covers all service providers. Nonetheless, providers continue to have their own specific terms which they use for defining and operationalizing disability.

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[35] The description is based on a study by Heike Boelzig and Jochen Clasen (February 2002). entitled "A Comparative Analysis and Assessment of the Policy Implications of Alternative Legal definitions of Disability on Policies for People with Disabilities. National Report Germany.

According to this definition, persons are disabled:

(1) If their physical function, mental capacity or psychological health differs with great probability for a period of more than 6 months from that of persons of the respective age, and therefore are affected adversely in their participation in social life. Persons are also disabled if such effects can be expected.
(2) Persons in the sense of Part 2 of Book IX are severely disabled if they have a degree of disability of at least 50 and lawfully reside, or have their ordinary residence in Germany or are employed in this country.
(3) Severely disabled persons are equal to persons with a degree of at least 30 but less than 50 and if they are not able to take up or remain in employment due to their disability (disabled persons with equal status).

Book IX places greater emphasis on the participation as reflected in the adoption of the ICF terminology. Thus, the concept of "participation" replaced "rehabilitation", the notion of "provisions for the participation in working life" substituted the notion of "occupational integration", the notion of "social rehabilitation" changed to "provisions for the participation in social and communal life", and the concept of "medical rehabilitation" became "provisions for medical rehabilitation".

Australia

Section 4 of the Australian Disability Discrimination Act (1992) defines disability as:

a) total or partial loss of the person's bodily or mental functions; or
b) total or partial loss of a part of the body; or
c) the presence in the body of organisms causing disease or illness; or
d) the presence in the body of organisms capable of causing disease or illness; or
e) the malfunction, malformation or disfigurement of a part of the person's body; or
f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

h) presently exists; or
i) previously existed but no longer exists; or
j) may exist in the future; or
k) is imputed to a person.

The Act prohibits both direct (s. 5) and indirect discrimination (s.6) based on disability. Section 15 addresses discrimination in job advertising, job offers and in the terms and conditions of employment, including access to opportunities for promotion, transfer, training or any other benefits associated with employment. Section 15 (3) lays out the principle of the duty to accommodate short of undue hardship (unjustifiable hardship on the employer).

Definitions of disability differ between Departments, making it difficult to determine exactly which groups of people are being referred to. The *Disability Discrimination Act* (1992) takes a very broad view of disability, considering it to be physical, intellectual, psychiatric, sensory, neurological or learning disabilities. It also includes discrimination against a person because they have some disease-causing organism (such as the HIV virus) present in the body.

The *Disability Services Act* (1986) does not include a definition of disability but specifies the target groups as those persons with a disability that is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; is permanent or likely to be permanent; and results in a substantially reduced capacity of communication, learning or mobility, and requires ongoing support services.

United States

The Americans with Disabilities Act (ADA) came into force in 1990. The act prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress. Under the ADA[36], an individual with a disability is defined as:

> a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.[37]

Under the Act, "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs (which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This list is similar to the one used in the regulations for section 504 of the Rehabilitation Act of 1973.

The expression "Substantial limitation of a major life activity" means that a person is severely limited in activities such as caring for one's self, performing tasks requiring dexterity, walking, seeing, hearing, speaking, breathing, learning, and working.

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[36] "Disability." The definition of "disability" is the same as the definition in the title III regulation codified at 28 CFR Part 36. It is comparable to the definition of the term "individual with handicaps" in section 7(8) of the Rehabilitation Act and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare (HEW) in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulation implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability" (Education and Labor report at 50).

[37] Department of Justice, Civil Rights Division, *Disability Rights Section (May 2002)*. A Guide to Disability Rights Laws. At: http://www.usdoj.gov/crt/ada/cguide.htm

Annex D

Summary
Disability Definitions — Laws and Programs

1. Antidiscrimination and protection of the rights of persons with disabilities

Law	Objective	Disability Definition
1.1 ***Canadian Charter of Rights and Freedoms*** (1985)	The Charter does not define disability. Section 15, prohibits discrimination based on mental or physical disability.	No definition but Charter stipulates equality without discrimination based on mental or physical disability and does not consider as discriminatory any law, program or action that strive to improve the conditions of those that are disadvantaged.
1.2 ***Canadian Human Rights Act*** (1977)	Ensure equality of opportunity and freedom from discrimination in federal jurisdiction.	Any previous or existing mental or physical disability, including disfigurement and dependence on alcohol or a drug.
1.3 ***Employment Equity Act*** (1995)	To achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability. Also to fulfill goals correcting the conditions of disadvantage in employment.	Long-term or recurring physical, mental, sensory, psychiatric or learning impairment: (*a*) consider themselves disadvantaged in employment because of impairment or (b) believe that employer or potential employer likely to consider them disadvantaged in employment because of impairment.
1.4 ***Immigration and Refugee Act*** (2001)	To establish a basis for determining admissibility to Canada and not refuse applicants because of a disability.	No definition but inadmissibility criteria shifted from "disability" to "health condition".
1.5 ***Broadcasting Act*** (1991)	To provide accessible programming to disabled persons	No definition but mainly targets visual, hearing and sensory impairments.
1.6 ***Canada Transportation Act*** (1996)	To ensure transportation system is accessible to all pwds	No definition but mainly targets physical and sensorial impairments.

Law	**Objective**	**Disability Definition**
1.7 ***Canada Evidence Act*** **C-20** An Act to amend the Criminal Code (Protection of Children and other Vulnerable Persons) and the Canada Evidence Act (Presently at First Reading)	The *Canada Evidence Act* provides for the rights of persons with disabilities to participate as witnesses in civil and criminal proceedings, subject however to some reservations in the case of persons with a mental disability.	No definition but Act states **under section 6 as it exists now (**R.S., 1985, c. C-5, s. 6; 1998, c. 9, s. 1) **6** (1) If a witness has difficulty communicating by reason of a physical disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible (2) If a witness with a mental disability is determined under section 16 to have the capacity to give evidence and has difficulty communicating by reason of a disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible. (3) The court may conduct an inquiry to determine if the means by which a witness may be permitted to give evidence under subsection (1) or (2) is necessary and reliable.

2. Activities of Daily Living and assistance in the home

Program & Authority	Objective	Disability Definition	Eligibility Criteria – Requirements	Assessment
2.1 Disability Tax Credit *Income Tax Act* Subsection 118.3(1) -CCRA (Administration) -Finance Canada (Policy)	To recognize that a severe and prolonged mental or physical impairment reduces the individual's ability to pay tax because he or she incurs non-discretionary disability-related costs).	Not defined in Income Tax Act.	Must have a severe and prolonged mental or physical impairment the effects of which: ■ Render the person blind or otherwise markedly restricted in the ability to perform a basic activity of daily living all or substantially all of the time, even with therapy and the use of appropriate devices and medication, or ■ Would markedly restrict the individual in a basic activity of daily living, but for extensive therapy required to sustain a vital function. ■ Basic activities of daily living are limited to feeding or dressing oneself, speaking, hearing, eliminating, walking, or perceiving, thinking and remembering.	Disability must be certified by a medical doctor, or, depending on the activity that is restricted, by another specialist such as an optometrist, audiologist, etc.
2.2 Infirm Dependant Credit -CCRA (Administration) -Finance Canada (Policy)	To recognize that a taxpayer supporting an adult dependant who is mentally or physically infirm has a lesser ability to pay tax than a taxpayer with the same income and no such dependant.	"Infirm" not defined in the Income Tax Act	Taxpayer supporting a mentally or physically infirm adult dependant relative. The dependant must require support for a considerable period of time and live in Canada.	
2.3 Caregiver Credit -CCRA (Administration) -Finance Canada (Policy)	To provide assistance to individuals providing in-home care for a parent or grandparent age 65 or over or an infirm adult dependent relative.	"Infirm" not defined in the Income Tax Act.	Taxpayer providing in-home care to a dependant parent or grandparent 65 or older or a mentally or physically infirm adult dependant relative.	

Program & Authority	Objective	Disability Definition	Eligibility Criteria – Requirements	Assessment
2.4 Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D) -CMHC	Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D) offers financial assistance to existing homeowner and rental housing to improve the accessibility and use of the dwelling unit for occupants with disabilities.	World Health Organization definition of disability, i.e. Any restriction or lack (resulting from an impairment) of ability to perform an activity in a manner within the range considered normal for a human being.	■ Homeowners may apply if the value of their house is below a specified figure, and their household income is below established ceilings (limits) based on household size and area. ■ Landlords may apply for modifications to units if the rent is at or below established levels, and the units are occupied by tenants with incomes below the income ceilings.	Assessment to determine the best adaptations required.

3. Income

Program & Authority	**Objective**	**Disability Definition**	**Eligibility Criteria – Requirements**	**Assessment**
3.1 **CPP Disability** *The Canada Pension Plan Act* Section 42 (2) -HRDC	To provide basic earnings replacement to a contributor to the Plan when he/she becomes disabled.	Act defines who is considered disabled. The individual must have a **severe** (the person is incapable regularly of pursuing any substantially gainful occupation) and **prolonged** (long continued and of indefinite duration or likely to result in death) mental or physical disability.	■ An applicant 18 to 64 years old must have contributed to the CPP for a minimum number of years (4 out of the last 6 years), with earnings greater than or equal to 10% of the YMPE (was $39,000 in 2002); The CPPD also pays a monthly benefit to dependant children (under the age of 18) of disability beneficiaries. Children between 18 and 25 may also be eligible for benefits if they are attending a recognized school or university full-time. ■ Disabled according to CPP legislation. (severe & prolonged)	CPP officers review the application form, the medical report and any other supporting documents; then the application is sent for medical adjudication. Complex cases may also be reviewed by CPP physicians.
3.2 **Veterans Disability Pension Program** *The Veterans Pension Act* Section 35(2) -Veterans Affairs Canada	To provide pension payments to those having disabilities related to military service and serves as compensation for the loss of enjoyment of life. Compensate survivors of the primary beneficiary upon death.	Disability is defined as the loss or lessening of the power to will and to do any normal mental or physical act.	■ Permanent disability must be related to military service during wartime or peacetime. ■ Extent of disability (i.e.) the assessment is based on a Table of Disabilities and eligibility guidelines.	An adjudicator determines eligibility based on medical information. On-staff medical advisors help with complicated cases.

4. Employment and Learning

Program & Authority	Objective	Disability Definition	Eligibility Criteria-Requirements	Assessment
4.1 Attendant Care Deduction -CCRA (Administration) -Finance Canada (Policy)	To recognize the costs incurred by disabled taxpayers for care by an attendant required to enable the taxpayer to earn business or employment income or to attend school.	Not defined in the *Income Tax Act.*	■ Only the person with a disability may claim the attendant care expense deduction. The payment cannot be deducted if it was claimed as an expense under the medical expense tax credit. ■ Individual must meet the eligibility criteria for the disability tax credit ■ Individual must have earned income (including scholarships and bursaries).	Medical practitioner or appropriately qualified individual that determines eligibility for the disability tax credit.
4.2 Opportunities Fund -HRDC	To assist persons with disabilities in preparing for, obtaining, and keeping employment or becoming self-employed.	A person who self-identifies as having a permanent physical or mental impairment that restricts his or her ability to perform daily activities.	■ People with disabilities who do not qualify to receive benefits under EI. ■ Under exceptional circumstances, EI eligible individuals can be considered for participation under the program. Funding may be provided to cover costs such as participant wages or related employer related costs, living expenses, dependent care, disability related costs, personal supports and tuition.	Self identification. If appropriate, participants are expected to share the cost of assistance. Otherwise, eligible expenses, including living expenses, incremental costs of participation; and tuition will be negotiated with program officials.

Program & Authority	Objective	Disability Definition	Eligibility Criteria-Requirements	Assessment
4.3 Employability Assistance for Persons with Disabilities (EAPD) **(federal transfer delivered by provinces)** -HRDC	To enhance the economic participation of working age adults with disabilities by providing federal funding to provinces for a range of provincial programs and services.	No federal definition. Each province determines individual eligibility for EAPD services.	Government of Canada determines eligibility of provincial programming. Programs must provide the skills, experience & related supports necessary to prepare people with disabilities for employment, or to help them attain or maintain employment. Each province is responsible for program design & delivery as well as client eligibility.	Varies by province.
4.4 Vocational Rehabilitation Program CPPD -HRDC	To help people who receive a CPP disability benefit return to work.	Same as CPP Act section 42 (2)	■ Individuals must be receiving CPPD.	Client can apply themselves or be referred by a case manager adjudicator or other sources.

Program & Authority	Objective	Disability Definition	Eligibility Criteria-Requirements	Assessment
4.5 Canada Student Loans Program Section 2(1) of the *Canada Student Financial Assistance Regulations* in accordance with the *Canada Student Financial Assistance Act* (1994) -HRDC	To promote accessibility to post-secondary education (full time & part time) by lowering financial barriers through the provision of loans and grants for Canadians with a demonstrated financial need. Three of the four provisions of CSLP target students with disabilities (see below)	Permanent disability means a functional limitation caused by a physical or mental impairment that restricts the ability of a person to perform the daily activities necessary to participate in studies at a post-secondary level or the labour force and is expected to remain with the person for the person's expected natural life.	■ Canadian citizen or permanent resident of Canada or a Protected Person ■ Residence in province or territory that issues CSLs ■ Demonstrate financial need ■ Be enrolled in an eligible degree, diploma, or certificate program of at least 12 weeks in length (within a period of 15 consecutive weeks) at a designated post-secondary educational institution. ■ In the case of students with permanent disabilities: be enrolled in a minimum of 40% of a full course load in order to be eligible for full-time CSLs; be enrolled in between 20% and 39% of a full course load for part-time CSLs. ■ Maintain a satisfactory scholastic standard.	Borrower must qualify for CSLs and meet the definition of permanent disability. Medical report required.
4.5.1 Permanent Disability Benefit Subsection 43.1 (1)(b) of the *Canada Student Financial Assistance Regulations* -HRDC	To assist borrowers with permanent disabilities who are unable, due to their disability, to meet their Canada Student Loan repayment obligations without exceptional hardship.	CSLP definition	■ SLP criteria ■ For loans issued after 1995, the permanent disability must have occurred while the individual was in school or within 6 months of completing post-secondary studies.	Medical report similar to CSLs but must include a financial statement indicating that the borrower is unable to repay the debt without exceptional hardship.

Program & Authority	Objective	Disability Definition	Eligibility Criteria-Requirements	Assessment
4.5.2 **Canada Study Grant for Students with Permanent Disabilities** Subsection 34 of the *Canada Student Financial Assistance Regulations*	To offset the exceptional education-related costs associated with a student's permanent disability.	CSLP definition	Same as CSLs as well as: ■ Written confirmation for the need of disability-related services or equipment. (This must come from a vocational rehabilitation services worker, official from centre of students with disabilities, or a guidance counsellor/ financial aid administrator from post-secondary institution). ■ Two written estimates of costs for the particular services or equipment.	Similar to CSLs, but must include written confirmation of need for exceptional education-related services or equipment.
4.5.3 **Canada Study Grant for High-need Students with Permanent Disabilities** Subsection 34.1 of the *Canada Student Financial Assistance Regulations*	To address the unmet financial need and help to cover the costs of living and education for students with permanent disabilities.	CSLP definition	Same as CSLs as well as have financial need that exceeds the maximum amount of available federal and provincial financial assistance ($275 per week for full-time students and $4,000 lifetime limit for part-time students).	Similar to CSLs, as well as assessed need in excess of allowable maximums.

Acronyms

ADA	Americans with Disabilities Act
ADL	Assistance with Activities of Daily Living
ADMSC	Assistant Deputy Ministers Steering Committee on the Federal Disability Agenda
AHRDS	Aboriginal Human Resources Development Strategy
CBC	Canadian Broadcasting Corporation
CCRA	Canada Customs and Revenue Agency
CDB	Child Disability Benefit
CHRA	Canadian Human Rights Act
CMA	Canadian Medical Association
CMHC	Canada Mortgage and Housing Corporation
CP	Carer Payment
CPP	Canada Pension Plan
CPPD	Canada Pension Plan–Disability Program
CRTC	Canadian Radio-television and Telecommunications Commission
CSG	Canada Study Grant
CSLP	Canada Student Loans Program
CTA	Canadian Transportation Agency
CTV	Canadian Television
DDA	Disability Discrimination Act—Ontario
DSP	Disability Support Pension—Australia
DTC	Disability Tax Credit
EAPD	Employability Assistance for People with Disabilities
EBSMs	Employment Benefits and Support Measures
EEA	Employment Equity Act
EI	Employment Insurance
ES	Employment Services
EU	European Union
FETD	Framework Equal Treatment Directive
FWCS	Federal Workers Compensation Service
GoC	Government of Canada
HALS	Health and Activity Limitation Survey
HASI	Home Adaptations for Seniors' Independence
HEW	Health, Education, and Welfare
HIV	Human Immunodeficiency Virus
HRDC	Human Resources Development Canada
ICD	International Classification of Diseases
ICD-10	International Classification of Diseases – tenth revision
ICF	International Classification of Functioning, Disability and Health
ICIDH	International Classification of Impairments, Disabilities and Handicaps
METC	Medical Expense Tax Credit
MS	Multiple Sclerosis
OECD	Organization for Economic Co-operation and Development
OF	Opportunities Fund
PALS	Participation and Activity Limitation Survey
PCA	Personal Capability Assessment
PPMB	Persons with Multiple Barriers to Employment
RRAP-D	Residential Rehabilitation Assistance Program for Persons with Disabilities
SDPP-D	Social Development Partnerships Program
SSI	Supplemental Security Income
U.S.	United States of America
VAC	Veterans Affairs Canada
VIP	Veterans Independence Program
VRDP	Vocational Rehabilitation of Disabled Persons
WEA	Work Environment Act – Norway
WHO	World Health Organization